The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page ii.

VOL. LXXIV. **Saturday, July 12, 1930.** No. 28

Current Topics.

The Solicitors Bill.

AT A general meeting of The Law Society held on the 4th July the Solicitors Bill, a copy of which was published in our issue of 28th June, was presented and recommended by the Council for approval. Whilst approving the clauses in the Bill which make it compulsory for every solicitor to be a member of the Society and provide for the setting aside of sums from the annual income for the purpose of making grants to persons suffering as a result of the defaults of solicitors, the meeting decided to delete the clause providing that the Council might, with the concurrence of the Master of the Rolls, make rules regarding the opening of separate banking accounts for clients' moneys and the keeping of such accounts as might be prescribed. That decision of the general meeting has brought a letter from Sir JOHN J. WITHERS to the President of the Society, a copy of which is published in another column. Sir JOHN thinks that the Society has abandoned the only important provisions of the Bill. He evidently does not look upon compulsory membership as likely to add anything to the authority which the Society has over all solicitors, whether members or not, and considers that the proposed relief fund would be too small to prove of any real use. Consequently Sir JOHN has introduced a Bill into Parliament providing for the compulsory keeping of separate banking accounts for clients' moneys and for annual audits of solicitors' accounts. In this, at least, we agree with Sir JOHN WITHERS, that if anything is to be done at all it should be on the lines advocated by him. The statutory powers of the Council of the Society extend to all solicitors, whether members or not, and compulsory membership is therefore more a matter of domestic than of public concern, whilst the creation of a relief fund could at the best be of little practical value, would be very difficult to administer satisfactorily and by no means easy to justify on any principle of equity. We sympathise with those who regard the proposals for the compulsory keeping of separate banking accounts and annual audits as an undeserved stigma upon the profession as a whole, but it is easy to exaggerate in a matter of that kind, and it may be that, by themselves taking the initiative in securing the passing of a Bill such as Sir JOHN WITHERS has introduced, solicitors as a body would at once show their confidence in themselves and increase the respect and confidence of the public. There is no doubt, however, that the practical difficulties in the way of evolving and enforcing an effective system for the supervision and audit of solicitors' accounts which will secure even a moderate degree of protection to the public without imposing an undue burden on the profession, are very great. We must reserve comment upon Sir JOHN'S Bill until we have had an opportunity of considering the text of it. In the meantime, amidst much difference of opinion, there will be general agreement in regretting that Sir JOHN WITHERS has determined to resign from the Council of the Society, a decision which we venture to hope he may be induced to reconsider.

A Distinguished Scottish Lawyer.

BY THE death last week of Emeritus-Professor Dr. W. S. M'KECHNIE, of Glasgow, Scotland loses one of its most learned lawyers, one, too, who made his name widely known far beyond the confines of his native land. After a brilliant academic career, the late Dr. W. S. M'KECHNIE entered the solicitor branch of the profession, and although, like the good lawyer he was, he found much of the work which fell to him in the course of his daily practice full of interest and indeed fascination, he became early in his career attracted to the study of constitutional questions, and this bent of his mind led in 1894 to his appointment as Lecturer in Constitutional Law and History at Glasgow University. He occupied this chair till 1916, when he was appointed to the more lucrative post of Professor of Conveyancing in the same University, a position he retained with distinction till 1927, when he resigned after thirty-three years as a teacher in his *alma mater*. Happily the fruits of the late Dr. M'KECHNIE'S studies and research in constitutional law and history were not restricted to the prelections he delivered to his classes in Glasgow; he published several volumes—"The State and the Individual," "Reform of the House of Lords," "New Democracy and the Constitution"—all marked by that meticulous accuracy and exhaustive treatment which was characteristic of all he undertook. But the work to which he devoted himself with especial zest, to which he gave years of labour and painstaking research, and by which he made his name most widely known, was his masterly commentary on Magna Carta. This he claimed was the first treatment of the subject from the

standpoint of modern research. As he said, he had endeavoured "throughout several years of hard, but congenial work, to collect, sift, and arrange the mass of evidence, drawn from many scattered sources, capable of throwing light upon John's Great Charter." Published in 1905, the work was received with a chorus of praise by all competent critics. Still, however, Dr. M'KECHNIE continued his investigations, and in 1914 he brought out a new edition in which all the learning he had himself acquired during the intervening years added to that contained in the extraordinarily large number of contributions to the subject by scholars in France, Germany, and the United States, as well as in our own country, was drawn upon to make his presentation of the subject even more satisfying than before. Bearing as it does on every page the marks of exhaustive research, this commentary is likely to remain for a very long time the standard work on the subject.

The Endorsement of Bank Notes.

CERTAIN CORRESPONDENCE in *The Times* draws attention to the practice of requiring endorsement of Bank of England notes in other banks and post offices. It is, or was, a well-known practice of the Bank of England itself to require the bearer of one of its notes, demanding gold for it, as he was entitled to do before the war, to indorse it. In the ordinary case this demand was obeyed, for the simple reason that it was less trouble to write a signature—and any signature appears to have sufficed—than to waste time arguing about its legality. The practice was, however, wholly unauthorised, and stubborn refusal to sign forced the bank officials to give way. Since the Gold Standard Act, 1925, the bearer of a bank note cannot demand gold, but by the Currency and Bank Notes Act, 1928, the bank must if required change notes of £5 or upwards for £1 and 10s. notes. The obligations of the Bank of England, however, apply neither to post offices nor to other banks. There is a usual notice at post offices stating that it is not the duty of the clerks employed to give change, so that, unless a bank note is presented on a request for something of its exact value, when of course it is legal tender, its acceptance in exchange for something of less value and currency appears to be a matter of indulgence. Private banks and traders who oblige customers by changing bank notes can no doubt also make their own conditions for doing so. If the holder of a note is a stranger to the person who is ready to accept it on indorsement, it may be agreed that the practice is of little value. Even if the holder is a known person the decision in *Leeds Bank* v. *Walker* (1883), 11 Q.B.D. 84, indicates that the endorsement does not have the usual effect as prescribed by the Bills of Exchange Act, 1882, s. 55 (2); see p. 90 of the report. His signature, however, would be strong if not conclusive evidence that he had negotiated the note, and, if it was eventually found to be worthless, the case indicates that his transferee giving him the face value for it might sue him for money had and received.

Interpreting.

A FRENCHMAN was the plaintiff in an undefended action which came before Mr. Justice MCCARDIE on the 29th May (*Hugon* v. *Film Distributors, Limited*). The plaintiff was a film producer, and on the 13th March, 1928, he entered into a contract with the defendants concerning the British distributing rights of a film he was about to produce. Under the contract four separate payments were to be made to the plaintiff; three were made. The fourth, for £500, was due on delivery of the negative of the film. On the 31st January, 1929, the negative was tendered, but nothing had been paid in respect of the £500. Plaintiff's counsel, on putting the plaintiff in the witness-box to prove his case, asked his lordship's permission to put the few necessary questions in French, as the plaintiff was only capable of answering very simple questions in English, and they had not thought it necessary, in the circumstances, to engage an interpreter. The consent obtained, there followed a fluent and interesting series of questions and answers which must have greatly intrigued a casual entrant into the court. This was, of course, essentially a matter in which the retention of an interpreter would have been an unwarranted expense, and one sometimes wonders if they are not engaged when not really required. We are all familiar with the type of foreign witness who, ostensibly, cannot understand or speak a word of English, but who, nevertheless, quite glibly answers "yes" or "no" to counsel's question before the interpreter has even begun to translate. The expenses of the interpreter have at times led to disputes. An interesting and amusing case occurred in 1843 (*Plunkett* v. *Williams and Others*, Ir. Eq., 6 R. 80). The witness in question was of great age and could speak no other language but Irish. The plaintiff obtained leave to examine *de bene esse* through an interpreter. The trouble arose when the interpreter, who had been paid by the plaintiff's solicitor £5 for his attendance for the purposes of the direct examination, refused to attend for the cross-examination unless paid a further sum of £5. Both the plaintiff and defendant refused to bear the expense of the interpreter's attendance for the cross-examination. It was held by the then Master of the Rolls that a party could not examine without entitling his opponent to cross-examine the witness, and that he must bear whatever expense might be occasioned by detaining the witness for such cross-examination. Until 1911 the extent of liability of an interpreter who wilfully misinterpreted evidence appeared somewhat doubtful, but s. 1 of the Perjury Act, 1911, has provided that a person lawfully sworn as an interpreter in a judicial proceeding wilfully making a statement which he knows to be false or which he does not believe to be true, shall be guilty of perjury and liable to certain punishments.

Withholding Medical Aid.

SECTION 1 (1) of the Prevention of Cruelty to Children Act, 1894, makes provision for the punishment of any person over the age of sixteen years who has the custody, charge or care of any child under the age of sixteen, if he, *inter alia*, wilfully neglects such child. The actual words of the section contain no such reference to the provision of "medical aid" as had been incorporated in earlier statutes, but failure to provide such aid has, of course, been held to amount to wilful neglect within the meaning of the section. In *R.* v. *Senior* ([1899] 1 Q.B 283; 43 SOL. J. 114), the prisoner was found guilty of the manslaughter of his infant child, aged nine months, who had died of pneumonia. As a member of a sect whose religious doctrines prohibited him from calling in medical assistance in time of sickness, he did not supply his child with any medicine or medical aid, although he was aware of the gravity of the illness and of the probability that the child might die. Defining the words "wilfully neglect" in that case, LORD RUSSELL OF KILLOWEN, C.J., said: "'Wilfully' means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it. Neglect is the want of reasonable care—that is, the omission of such steps as a reasonable parent would take, such as are usually taken in the ordinary experience of mankind—that is, in such a case as the present, provided the parent had such means as would enable him to take the necessary steps." There have, of course, been a number of cases where there has been neglect to provide medical aid, and generally the offenders have been so actuated, as in the above case, by conscientious religious scruples. Occasionally, however, instances occur where there has appeared no reasonable excuse or justification for the withholding of a doctor's skill, and in such circumstances the guilty party is not likely to receive much consideration at the hands of a jury. A recent case in this connection came before Mr. Justice SWIFT at the Cornwall Assizes at Bodmin, when a man was charged with the manslaughter of his wife by neglect to give her proper medical attention.

At the close of counsel for the prosecution's opening speech, and after a statement by his lordship concerning the particular circumstances of that case, the jury found the husband not guilty, and he was discharged. This class of case is, indeed, one in which very great care is necessary before launching an accusation.

A Dummy Execution as an Entertainment.

A LONDON newspaper is responsible for the statement that an individual, who at least has some "flair" for the public taste, is giving representations of the hanging of convicts in an old prison, and, to use a theatrical metaphor, is playing to capacity. Originally he bought up this disused county jail for the purpose of throwing it open to the public on payment of a small fee. This failing to prove a sufficient draw, he restored the scaffold, which had been pulled down, and a dummy convict, dressed in an old suit and a large pair of prison boots, now pays the last dread penalty of the law four times daily, and is obviously a popular character. The more seriously minded of the local inhabitants, however, violently object to the performance and have called upon the local police to stop it. Their dislike of the business may be understood, but the solution of the problem of invoking the law to abolish it is not particularly easy. There is no question of contempt of court, although the majesty of the law is certainly treated with some levity. And though unseemly, it is hardly an indecent exhibition, notwithstanding that the words have on occasion been held to cover objects merely offensive or disgusting, as in *R.* v. *Grey* (1864), 4 F. & F. 73. No doubt the proprietor would urge that the performance was as strictly moral as ARTEMUS WARD'S waxworks, and gave impressive warning of the fate of the wrong-doer. The question whether it is a stage-play within s. 43 of the Theatres Act, 1843, may also be suggested; if so, it would need the censor's licence, which would hardly be granted in the circumstances. The *dicta* in *Wigan* v. *Strange* (1865), L.R., 1 C.P. 75, may indicate this as a possible method of attack. Even if in dumb show, it might be a stage-play within the statute, and, in fact, towards the end of last century a play called "*L'Enfant Prodigue*" was produced in this way. However, if recollection serves, similar scenes of execution are reproduced in innumerable "penny-in-the-slot" machines, for the benefit of youthful patrons. The present proprietor might perhaps add to the zest of the performance if he gave the dummy a new head every day of the waxen image of different statesmen. This apparently would not be an offence in itself, for to destroy a stuffed figure of an unpopular character, usually by burning, has always been a well-established public recreation. It may, however, be suggested that if any more prisons are sold, a restrictive covenant to prevent such entertainment might usefully be imposed.

Injunction to Restrain Statutory Offences.

THE CASE of *Att.-Gen.* v. *Sharp* (*The Times*, 28th June), shows the power of the Attorney-General to obtain an injunction restraining the doing of unlawful acts tending to the injury of the public. The defendant is an omnibus proprietor and had applied to the Manchester Corporation (who are the licensing authority for hackney carriages, including motor-omnibuses, for the City of Manchester) for a licence to ply for hire along certain routes within the city. The licence was refused, but the defendant persisted in plying for hire upon the routes in question, for which he was summoned and fined several times under the Manchester Police Regulation Act, 1844. This action was then brought by the Attorney-General at the relation of the Manchester Corporation for an injunction to restrain the defendant from continuing the unlawful acts complained of. Mr. Justice FARWELL granted the injunction, and his decision was upheld on appeal. It was argued for the defendant that as the Manchester Police Regulation Act provided for the imposition of a fine for plying for hire without a licence, the court had no jurisdiction to grant an injunction, the contention being that where a statute created an offence and imposed a penalty for its commission, that was the sole and exclusive remedy. If that contention had prevailed the defendant would doubtless have continued to ply for hire with his omnibuses so long as the takings enabled him to pay the fines from time to time imposed and still make a profit. There are, of course, many other instances where it pays an offender to continue to defy the law if no provision is made for a sentence of imprisonment in lieu of a fine. In *Att.-Gen.* v. *Sharp*, the Master of the Rolls, in an exhaustive judgment in which the authorities were reviewed, made it clear that in such cases the court will come to the assistance of the Attorney-General for the purpose of protecting public rights by granting the ancillary relief of an injunction where no other adequate relief is available or likely to be effective. There is nothing new in that principle, which is well established by a line of authorities, amongst which may be mentioned *Att.-Gen.* v. *Ashbourne Recreation Ground Co.* [1903] 1 Ch. 101; *Devonport Corporation* v. *Tozer* [1903] 1 Ch. 759, and *Att.-Gen.* v. *Wimbledon House Estate Co. Ltd.* [1904] 2 Ch. 34.

The Whole Truth.

IN 1785, in the case of *R.* v. *Aylett*, 1 Term. Rep. 63, Lord MANSFIELD, C.J., said: "In the case of perjury, I take the circumstances requisite to be these: the oath must be taken in a judicial proceeding, before a competent jurisdiction; and it must be material to the question depending." Accepting that general principle, it may be confidently asserted that perjury, unfortunately, is a far more common offence than is perhaps generally realised. Some witnesses would appear to labour under an almost constitutional incapability of speaking the truth, while others fall far short of the best standard through a tendency either to exaggerate or understate their evidence. The really truthful witness, he or she who is obviously accurate in every detail, and whose demeanour is unquestionably convincing, is comparatively rare. The frequent human disregard for the truth when personal interests are deeply involved, is, of course, widely appreciated, and has led to the invention of so-called lie-detecting apparatus. The practical merits of such inventions would appear to be reduced in proportion to the increase of the victim's powers of acting, and there seems ample room for a legitimate doubt whether the subtle intricacies of the mind will ever, with any degree of certainty, surrender their secrets to any mechanical investigator. Undoubtedly, however, lying, deliberate or otherwise, can be heard daily in the witness-box, and perhaps one of the strongest judicial condemnations of the practice was made recently by Mr. Justice Horridge in a summing up. "I am sorry to say," said his Lordship, "that witnesses lie, no matter how eminent they are. They come into the witness-box and tell shocking lies. One side or the other is lying in this case." It was for the jury to decide, he added later, which story they believed, without being frightened by the fact that they had to conclude someone was lying. Judging from the appallingly negligent manner in which the average witness takes the oath it is not very surprising that the whole truth and nothing but the truth is often ignored. Very rarely is the oath read as if it is meant.

The Dog in the Motor Car.

A NEW danger to the pedestrian was revealed recently in *Fardon* v. *Harcourt-Rivington and Anor.*, which came before Mr. Justice TALBOT and a common jury on June 26th, 1930. The plaintiff was claiming damages for personal injuries arising out of the defendant's alleged negligence in parking his car with a large Airedale dog inside. When the plaintiff passed by the defendants' car the dog was barking and standing on the seat. The plaintiff looked round to see what was the matter, and

almost immediately afterwards, the dog put his paw through the glass panel at the back of the car and a splinter entered the plaintiff's left eye. As a result of this the plaintiff lost his eye and was no longer fitted for his occupation as a skilled mechanical draughtsman. His lordship directed the jury that they should not award damages unless they came to the conclusion that the defendant had done something which an ordinary reasonable man would not have done in leaving the dog cooped up in the motor car. He left it entirely for the jury to say whether because some dogs got restive when left in a motor car for some time the defendant ought to pay heavy damages because he had left it in the car on this occasion. The jury brought in a verdict for the plaintiff and awarded him £2,000 damages.

Prima Facie Negligence?

IT MIGHT be thought from this that a new terror had been added to the lives of car owners and that car owners who were also dog owners and who wish to take the dog for a ride would find themselves in a quandary when they wanted to do a little shopping. But motorists will, no doubt, be consoled by the remark of Mr. Justice TALBOT that an accident like that in *Fardon* v. *Harcourt-Rivington and Anor.* happens on one occasion in a thousand. The question of negligence or no negligence was in this case left to the jury as one of pure fact; but the question may arise in certain circumstances whether there is not a *primâ facie* case of negligence against anyone who leaves a large animal cooped up in a motor car. It may in some cases be submitted that this is just as negligent as the leaving of a horse and cart unattended on a public highway (see *Illidge* v. *Goodwin* (1831) 5 C. & P. 190; *Whatman* v. *Pearson* (1868), L.R. 3 C.P. 422; *Gayler & Pope Ltd.* v. *Davies & Son, Ltd.* [1924] 2 K.B. 75 (68 SOL. J. 685). Of course, the mere fact of leaving a motor car unattended is not in itself evidence of negligence. In *Ruoff* v. *Long & Co.*, 60 SOL. J. 323; [1916] 1 K.B. 148, Mr. Justice AVORY said that it was impossible to say "that those who leave standing unattended in a road a machine which will not move unless some person intentionally puts it in motion are *primâ facie* guilty of negligence." More appropriate, however, to the circumstances of the dog in the motor case are the words of HAMILTON, L.J., in *Latham* v. *Johnson* [1913] 1 K.B. 398, viz.: "That a person who, in neglect of ordinary care, places or leaves his property in a condition which may be dangerous to another may be answerable for the resulting injury, even though but for the intervening act of a third person that injury would not have occurred."

Libel in a Cartoon.

A SOMEWHAT unusual action was reported in *The Times* of the 25th June, in which one YORKE, a professional football player, recovered £200 damages from Lincoln Newspapers, Ltd., publishers of the *Lincolnshire Chronicle*, in respect of a cartoon which appeared in that paper. For the defendants, the artist who drew it testified that he had no particular player in his mind at the time, but the crowd watching a match evidently identified the plaintiff with the picture, and damages were awarded as stated. Generally speaking, cartoonists are allowed considerable licence in this country, and pictures representing eminent statesmen as pigs, snakes, and other disagreeable creatures pass unresented, and, indeed, a certain class of politician would deem it much better to appear as a pig or snake than never to appear at all. Nevertheless, as stated by SWINFEN EADY, J., in *Corelli* v. *Wall* (1906), 22 T.L.R. 532, "it is well settled that a person may be defamed as well by picture or effigy as by written or spoken words." In that case the defendants had published picture postcards of Miss MARIE CORELLI, depicting some quite imaginary incidents in her life, though, as the judge held, not necessarily exposing her to ridicule and contempt. The case, however, is only reported on the refusal of an interim injunction. In *Monson* v. *Tussaud* [1894] 1 Q.B. 671, the plaintiff was involved in the sensational "Ardlamont Mystery" of that time, and the defendants had exhibited his effigy, not indeed in their "Chamber of Horrors," but in an anteroom to it. This also was a case as to an interlocutory injunction, which MATHEW and COLLINS, JJ., granted, but which was dissolved by the Court of Appeal on new evidence being adduced that MONSON had either expressly or impliedly consented to the exhibition. Both courts, however, were of opinion that the exhibition was *primâ facie* libellous. If memory serves, the late Mr. DUNLOP also brought an action against the well-known Tyre Company in respect of his figure which so often appeared in their advertisements, but it does not appear in any authorised report.

The Black List.

WHEN THE Licensing Act, 1902, first came into operation, the courts and police were busy "blacklisting" habitual drunkards, that is, notifying the conviction of an "habitual drunkard" to the police so that the defendant could be prevented, so far as possible, from being supplied with intoxicating liquor. The Act was soon found to be of little use in practice, and went to the lumber room of idle law. There it has kept company with the provisions of the Inebriates Act, 1898, of which it was intended to be an extension. The orders of detention contemplated by these provisions cannot be made because no one now provides places of detention. Yet, oddly enough, habitual drunkenness is decreasing. It is a little interesting to see the "black list" revived by the Worthing justices in a case before them last month, but unless the offender is very notorious he is unlikely to be efficiently checked in his efforts to get drink in a considerable town like Worthing. And, if he can add to the price of his drink the few pence necessary to secure motor omnibus transport to other near places, he can defy the effort to circumscribe the gratification of his thirst for alcohol. What used to be sometimes forgotten is that the defendant whom it is proposed to blacklist has a right to be tried by a jury. The offence of being an habitual drunkard and committing one of a number of offences scheduled to the Inebriates Act, 1898, is one which was scheduled to the Summary Jurisdiction Act, 1879, as an indictable offence triable summarily, and although it does not reappear in the schedule to the Criminal Justice Act, 1925, which replaces that to the Summary Jurisdiction Act, 1879, it must be treated as being added thereto. The point is discussed at p. 108 of Lieck and Morrison's "Criminal Justice Acts," second edition.

Low Flying.

THE DISCUSSION in Parliament and in the Press on the noise inflicted by aircraft on persons to whom quiet is essential for their work or health raises a very wide question. A makes a noise; B wants quiet. A can always force B to accept his noise: B can never force A to accept his quiet. So all the unfortunate B's have to listen to A's loud speakers, have to submit to be blared at by A's motor horns, and even if they escape to spots where they can live away from highways in detached dwellings far apart, they remain exposed to the drone of A's aircraft, the sound often rising, as the planes fly low, to a tormenting roar. In theory the law gives a remedy to B in some circumstances. In practice he is very nearly helpless. B has to earn his living and to do so has to remain in A's company for long periods of time. There are, of course, provisions dealing with low flying, which is one of poor B's greatest afflictions, but prosecutions are so rare as to be unheard of, a form of silence which for once does not please B. B must reconcile himself to suffering and possible madness. A says it is in the interests of progress, and A knows, or, alternatively, A is entirely selfish and inconsiderate. Who is B, anyhow? The sooner he is dead, the better.

The Circuit System.

A Reading delivered before The Honourable Society of The Middle Temple.

By Master St. John Micklethwait, K.C.

Members of the Middle Temple.

I have been told by some of those who are sitting on my right (and who ought to know better) that as I have been elected Reader of this Inn it is my duty to read. Whilst anxious to do my duty I feel that most of you are far more capable of delivering a lecture upon law to me than I am capable of lecturing to you. I am therefore not going to speak to you to-night on any branch of the law, but on a matter which I regard as of the greatest importance at the present time, namely, the Circuit System. After over thirty years' experience of a circuit, during which time I have seen the system in full working order, I feel that I am qualified to speak to you upon it.

The subject is of great importance to-day in view of the suggestions that are frequently being made, that the Circuit System is now played out, that public time and money is wasted upon it, and in view of the suggestions that are put forward from time to time to abolish circuits altogether or to centralize the circuit business in a few large towns throughout the country. The basis of the Circuit System is that judges should at frequent intervals go down and hold assize courts in every county in the Kingdom, and in my view that system should be maintained. It is true that the system is capable of improvement, having regard to modern requirements, and in that connection I may say that only this morning I received a letter from His Honour Judge Clements, who is so well known to you all in Hall, suggesting certain improvements of a very interesting character, and I can only regret that the time at my disposal does not enable me to discuss these improvements here to-night.

I propose to consider the Circuit System from two points of view: (1) the influence which it has had in the past and still has on the country as a whole, and (2) the influence which it has had in the past and still has on the Bar as a profession. I hope to show you that this system has not merely brought the administration of justice to the doors of people living in the remote parts of the country, but that the sight of a judge administering justice in the county towns has had a greater effect than anything else in educating the people of this country.

We often hear foreigners remark that we are naturally the most law-abiding people in the world, and I believe that that statement is true, and that the reason for it is that for generations past the people of England have seen judges administering justice in their midst on the various circuits. Further, I believe that the Circuit System has had an immense influence on and been of great benefit to the Bar. It is our pride that we belong to a profession which, from the point of view of professional probity and honour, is second to no profession in the world, and I believe that that is due to the rules and standard of etiquette, which have largely, if not entirely, grown up in the past on circuit and as a result of the Circuit System. I do not propose to talk to you about the history of the system, which you can find for yourselves in any text-book. We all know that in old days the courts at Westminster were closed, and that before railways were invented the judges, who were assigned to the various circuits, mounted their horses at Temple Bar and rode off towards the first circuit town on their list. They were accompanied by a large concourse of officials, barristers and servants. They were met by the high sheriff at the county boundary and taken either to a big house *en route* for the night or direct to the circuit town. The sheriff was in full uniform, and his coach was accompanied by armed retainers in livery, and the whole thing was carried out in immense state. Nowadays the judge probably travels by rail to the circuit town where he is met by the high sheriff. His progress is still almost royal, with his escort of police, who are sometimes mounted, and with the trumpeters in uniform to announce his arrival.

In the assize court the scene is brilliant and imposing. On the bench is the judge in his scarlet robes, his black cap and gloves beside him, with a bouquet of flowers in front of him. It may be that the bouquet was originally provided to counteract a possibility of gaol fever, which at least on one occasion (at Oxford) overcame the court and to the effects of which the judge, the high sheriff and a number of barristers succumbed. On the right of the judge is the high sheriff of the county in full uniform, who is accompanied on the bench by the chaplain in gown and hood. No doubt in the old days the assizes were the most important and imposing ceremony in many towns during the year, and the same thing may still be said of them in many counties at the present day. Among the persons present the first to be noticed are the notables of the county, for the most part justices of the peace, who attend to sit on the grand jury. Next come the petty juries, containing residents from all over the county, including the farmers in the country districts, and the shopkeepers in the towns. Then there are the various witnesses and the parties, and the prisoners and their friends. Lastly, there is a large concourse of people who flock into the town, and attend the court from mere curiosity.

Anyone who was at Hereford when the Armstrong trial was on, or at Gloucester when Mrs. Pace was being tried, would realise what an immense attraction a sensational case at assizes still possesses for the people throughout the whole district round. At the time of those cases the town was absolutely packed with thousands of people, who were trying to obtain a view of the two most important personages at the moment, namely (1) the prisoner, and (2) the judge who had to conduct the trial. Now consider what is and has been the educational effect of judges thus holding assizes.

In days before people could read or write, when newspapers were not circulated as they are now, but for the assizes many people throughout the country would not only be ignorant of what a judge was like, but would probably never have heard of him, and they would not have the slightest idea of the administration of justice except at petty or quarter sessions. Can it be said that that position has been altered nowadays when railways and omnibuses make it so easy to get about the country? How many of the hundreds and thousands of people who come to London or other big towns for amusement ever go near the Law Courts or see a judge at work? The position is different at the assizes, because there very many people have to attend, and many others attend from curiosity.

In my humble opinion the circuit system, has done more to educate the public in the knowledge of, and obedience to the law, than any other cause whatever, and it still is in that respect of the highest possible value. Some years ago I was very much struck by a little incident, which happened to me in a small county town in the west. A notorious case had been tried at the Old Bailey in which there had been considerable uproar in court, and various interruptions and disorderly scenes had occurred, and a full report of this had appeared in the local newspaper. I was walking along a street in the town when an old agricultural labourer, who was a friend of mine, came up and spoke to me. He said to me: "Is it true, as the newspapers say, that a judge in London has been insulted?" I replied: "There has been some trouble, but the account is probably exaggerated." He then said to me: "The papers say that the proceedings in the court in London had been interrupted and the judge insulted, and I am sorry that I should have lived to see such a thing happen in this country." I said to him: "Have you ever seen a judge in London?" to which he replied: "No, sir, I have never in my life been beyond Monmouth" (some fifteen miles away) "but I have often seen the red judge

there and I know how dignified everything is and the way in which justice ought to be administered."

It is true that the number of cases, both civil and criminal, that are tried at the Assizes have steadily decreased during recent years owing to legislation which has extended the jurisdiction of inferior tribunals.

It is probable, however, that the decision to extend the trial on circuit of divorce cases, and in particular, poor persons divorce cases, will add to the work at certain towns in the future. I am firmly convinced that the educational value of holding Assizes in each county town under the present system far outweighs the alleged loss of public time or public money, owing to a judge occasionally not having much work to do there. The grouping of a number of counties round one centre would not, in my opinion, have the same effect, but would only cause unnecessary trouble and expense to the counties concerned, over the necessary attendance of the police, jurymen and witnesses. The sending of criminal cases to distant towns or to the Old Bailey to be tried may be a useful expedient in some cases, but as a rule I think the disadvantages outweigh the benefits. In a recent case which was sent to the Old Bailey from a distant county town, and in which I was interested, I made some inquiries and ascertained that the costs had been increased some four-fold and the resulting benefit was practically nil. It seems to me that the old method of trying a man in his own county is usually the cheapest and the best.

Dealing with the matter now from the point of view of the Bar. As already pointed out, in the old days the courts at Westminster were closed, and members of the profession on the common law side, both leaders and juniors, usually belonged to a circuit and most of them started at the beginning of it and went right round to the end.

Among the leaders of each circuit were the serjeants, later the King's Counsel, and all the leading juniors.

All of them, whether the youngest junior or the eldest serjeant, lived together, travelled together, and practised together. They formed a sort of club, which in time was called the Circuit Mess, an institution which became a very important feature in the history of the profession. Professional rivalry, then as now, was very keen and rules very soon grew up to prevent one man taking an unfair advantage of another whether in or out of court, and gradually a strict code of professional etiquette grew up.

If the rules were disobeyed woe betide the culprit who disobeyed them. Such disobedience involved censure by or expulsion from the mess and entailed not merely professional but social disgrace. In substance many of the old rules of the Circuit Mess are the rules regulating the profession to-day. Then they were unwritten rules, now many of them are to be found in the "Annual Practice."

At present the Bar Council gives decisions on questions of professional etiquette, but in those days, unless the matter was brought before the Benchers, there was no authority but the Circuit Mess to deal with such questions. I believe that, even at the present day, the fear of expulsion from a Circuit Mess has as great or possibly a greater deterrent effect upon many people than the possibility of censure by the Bar Council or even action by the Benchers. I think, therefore, that I am justified in saying that the Circuit Mess, forming as it did a necessary part of the circuit system, had in the past and still has a very great part in maintaining the professional purity of the Bar.

It may be that some of those of you among my audience are going out to practise beyond the seas.

As barristers of the Middle Temple with the "Lamb and Flag" on your shields, you have the duty, not merely to keep your own shields untarnished, but to see that the rules of professional honour are maintained by your fellows who have not had the advantages of being called to the Bar of England. It may well be that when you rise in your profession, as I hope you will, that the duty of making and maintaining rules of etiquette will fall upon you, and if so you may perhaps bear in mind what I have said about the history of the growth and maintenance of those rules here in the past, not forgetting what a tremendous influence for good a body like a Circuit Mess, which is partly professional and partly social, can wield over its recalcitrant members.

Now I want to say a few words about circuits viewed from a different aspect altogether. I joined a circuit directly I was called to the Bar, and I would advise any young man who intended to practise in this country to do the same, unless he was assured of an immediate London practice.

It is a hunting ground, and a very happy hunting ground, for experience for any young barrister. It is, of course, no use turning up at a circuit town or at quarter sessions for half an hour or so, and waiting till the briefs are all given out and then going away. You must concentrate on a few places and go there regularly and sit the whole business out. Once I sat in court on a Saturday morning listening to cases being tried. All the briefs had been delivered and there was no chance of anything coming my way. I decided that I could not stay over Sunday and so left at mid-day to catch my last train that would get me home that night. Another man sitting in court, whose train went a little later than mine, decided to stay a little longer. Half an hour after I had left the court one of the juniors engaged got an urgent call back to London, and the other man who remained got five returned briefs. You may also get experience in unexpected ways.

Once, just after I had been called, I was sitting in a court of county quarter sessions listening to a case, when there was a hurried consultation between one of the counsel engaged in it and someone who had rushed in from the second court. The counsel turned round and saw me, and threw me a brief and asked me to hurry off at once to the second court and do it for him. I picked up the brief and rushed across the corridor without untying the tape. When I got into court I found the deputy chairman of quarter sessions sitting with a jury impanelled, and a prisoner in the dock. Directly I appeared I was greeted with a volley of abuse for keeping the court waiting. The deputy chairman expressed the greatest surprise that I had not taken the trouble to find out that my case had been called on, and expressed a very forcible opinion as to my conduct in wasting his time and the time of the jury, and then he told me to get on at once and open my case. I did not know the name of the prisoner, or the charge against him, or any of the facts, and the only thing I could do was to explain to the jury that the case was one in which the onus of proof was on the prosecution, that I proposed to place the evidence before them, and that if they were satisfied from that evidence of the guilt of the prisoner they would no doubt find him guilty. I pointed out to them, however, at some length, that if they had any reasonable doubt in the matter, they ought, after hearing the summing-up of the learned deputy chairman, to acquit the prisoner, and I used up every platitude of that kind that I could think of! The case duly proceeded, and after the acquittal or conviction of the prisoner I went back again once more to the first court to continue listening to the case in progress. I had been there about three or four minutes, when once more there was a disturbance in the front row and consultations and whisperings took place. Suddenly the same counsel turned round and threw me another brief, and told me to hurry and go and do that one. Once more I rushed across the corridor, found the same deputy chairman sitting, the same jury impanelled, and a different prisoner in the dock. When the deputy chairman saw me he became almost speechless with rage (a fact to which I attribute my escape from being committed for contempt of court)! He was barely able to splutter out "Get on. Get on." The difficulty that now confronted me was that I had already used up my ammunition,

and had not got a single platitude left, and I can only draw a veil over the scene that ensued. I do not remember what I said in opening, and I trust that it was never reported. Somehow or other I managed to get the witnesses in the box and the case then proceeded all right. I am quite sure that a little knocking about of this kind is wonderfully good training for a young man entering the profession.

The story has a sequel and a very pleasant one. After the second case was over the court adjourned for lunch, and I found myself sitting next to the deputy-chairman. I kept very silent until the mellowing effects of an excellent lunch had made themselves apparent on my next-door neighbour, and then, emboldened by a glass of the justices' excellent whisky, I told the Deputy-chairman the whole story. To my relief he roared with laughter, and thought the whole thing a very good joke, and I am proud to say that we became the best of friends. For many years after that I practised before him and many a good turn did he do me. Now that I have the honour of sitting as a justice of the peace in that court it is my provilege to sit beside him, in his capacity of chairman of quarter sessions, and it is therefore true to say that it is an ill wind that blows nobody any good.

There is another point of view from which a circuit is very beneficial to a young barrister, namely, the social side. Many young barristers have not the good fortune to know judges personally. In my own case I never met a judge until I went on circuit. Meeting a judge personally, whether as marshal or as a friend entertained by him, is a very great advantage to a young man starting his career at the Bar. I do not suppose it makes any difference to the judge in his treatment of you, but it affects your outlook and your point of view and lessens the nervousness or timidity which you might otherwise feel. Instead of regarding a judge as an unknown quantity up aloft, whom you have to hoodwink, you regard him as a human being who is trying to do what is right and just, and whom it is your duty to try and help to do justice, incidentally, by proving that the only way for him to do it is by deciding in favour of your client. In the old days I used to think that the old judges became more human when they were on circuit, but I wish to make it clear that these remarks only apply to the old judges who are now dead and gone. Our present judges are so kind and considerate to young members of the Bar on every occasion that there is no room for improvement. I remember a Lord Chief Justice, now dead, who used to terrify me in London. He came on our circuit, and after treating me with great kindness in court he came up to the club and mixed with us all, took off his coat and played billiards with the most junior members of the circuit. I remember an amusing incident happening on that assize. The Lord Chief Justice was out with his marshal for a walk after the rising of the court. He prided himself very much on the fact that he always remembered faces, and as he and his marshal were walking along they saw a man coming towards them, whom the Chief Justice thought he recognised. He said to his marshal: "Marshal, I never forget a face when once I have seen it, I am sure I know that man," and before the marshal could stop him he ran across the road, shook the man warmly by the hand, and entered into conversation with him. The man looked very much astonished and rather terrified, and, after making a few remarks to him, the Chief Justice rejoined his marshal. When he got back, he said to the marshal: "Marshal, I never forget a face, I am sure I know that man, I wonder who he is," to which the marshal replied: "Well, Chief Justice, you ought to know him for you have been trying him all the afternoon." I was told of this incident by the marshal himself shortly after it happened.

The late Mr. Justice Salter, who was so long an ornament of this Bench, and whose death we all so deeply deplore, was a great lover of his circuit, and no doubt often enjoyed the hospitality and kindness of the judges who went upon it, just as when he became a judge he dispensed hospitality to the barristers practising before him. It was on the Western Circuit, when at the Bar, that he made the famous repartee which is so well known. He was trying to get a judge to stop a case on the ground that there was no evidence to go to the jury. The judge said to him, "I have no doubt, Mr. Salter, that you are quite right in your contention, but if I stop the case now the plaintiff will surely go to the Court of Appeal, and the judges of the Court of Appeal will reverse my decision." Mr. Salter replied, "My lord, that would be impossible, they are not capable of doing such a thing." The judge then said: "The judges of the Court of Appeal are capable of anything; you ought to know that better than I, because you see much more of them than I do; I only see them at lunch"; to which Mr. Salter replied "My lord, if I may respectfully say so, your lordship sees them at their best"!

Talking of judges of the Court of Appeal, it was on my own circuit, the Oxford Circuit, that Lauriston Batten, K.C., one of our famous wits, made his celebrated observation to the court on the subject of drunkenness, to which I would direct the attention of police magistrates at the present moment, who seem to spend so much time in trying to discover a definition of drunkenness in the case of drivers of motor vehicles. In an elaborate argument Batten pointed out to the court that at one end of the scale you found a man who was as drunk as a lord, whilst at the other end of the scale you found a man who was as sober as a judge. There was then, he said, the man half way between, in that intermediate stage which one might associate with the name of a lord justice! However, I feel that I am digressing from my subject.

If there are any of you who are curious as to the entertainment of judges on circuit in the very old days, you will find in the library a document containing the accounts of two of the judges who went on the Western and Oxford Circuits respectively in 1596 and following years, namely, Walmersley, J., a Justice of the Common Pleas, and Fenner, J., a Justice of the Queen's Bench. The document is to be found in the Camden Miscellany, and contains a list of the food, both solid and liquid, which those distinguished judges purchased or were given whilst on circuit. You will note on the Western Circuit (which has always been famed for its hospitality) that at Winchester their lordships had eighty-nine gallons of strong ale in three days! They did better at Salisbury, where possibly the weather was getting hotter, as they had ninety gallons in two days. At Exeter the sheriff of Devon gave them forty-two gallons of sack and sixty-three gallons of claret! On the other hand, when one comes to my own circuit, the Oxford Circuit, there is one entry which interests me very much. It appears that at Worcester the judges were forced to pay thirteen pence for water. It is not said whether this water was for washing or drinking, but I imagine it was required for the latter purpose. If that is so, it indicates that even in those early days the Oxford Circuit possessed the reputation for sobriety which it has maintained to the present day!

Looking back over many years of circuit life, the things that strike me most are the many acts of kindness and good fellowship which one received from one's fellow barristers, and the deep and lasting friendships formed on circuit. One little incident comes back to me after more than thirty-five years, which I can never forget.

It was in the days when I was very hard up, when a guinea meant a great deal to me. I went to the County Quarter Sessions in the hope of getting a brief, and when I got there, I found to my disappointment that there was only one prisoner and that the brief for the prosecution was in the hands of a local member of the Bar, who did the bulk of the work in that district. I remember that it was a private prosecution and that the brief was marked five guineas.

The happy possessor of the brief was very kind to me, and tried to cheer me up by saying that he knew the prisoner wanted to be defended, and that I should therefore make a guinea on a dock defence. Just before the court sat,

however, my hopes were dashed to the ground by the arrival of another barrister slightly my senior. Seeing my disappointment the local barrister then made this suggestion. He expressed the view that it was rather hard that there should be three of us there, and only two briefs going, and he suggested that we three should enter into an agreement to pool any fees that we might get, and he himself agreed to pool his. The two of us very naturally consented and we went into court and the senior barrister got the dock brief. I left the other two in court fighting for the rest of the day, and went home with my share of the pool, namely two guineas, in my pocket!

It is little incidents such as that that create friendships on circuit that continue for life. When I was a small boy at school I was taught a poem about a gentleman named, if I recollect rightly, The Miller of the Dee. He used to sing a song which had a refrain to it which, if slightly altered, would run :—

"I envy nobody, no, not I,
and nobody envies me."

If I were giving advice to a young barrister who was just starting in his profession I would advise him to learn that refrain and not forget it. He should remember it particularly when things look black, and he appears to be dogged by ill-luck, and when as sometimes happens, he is inclined to think that someone else is getting the briefs which ought to come to him. If he will remember that refrain, and avoid the feeling of jealousy and bitterness which is so natural, he will keep happy and find his good luck will come back again, and the clouds will roll by. It is that spirit which I have always found existing on my circuit, and I believe on all circuits, and which leads to that good fellowship which makes the circuits what they are.

Now the allotted time is past. I have endeavoured very imperfectly to put before you some of the advantages of the circuit system and circuit life. I can only hope that some of my remarks may have brought back memories to the older members of my audience, and that they may be of value to some of the younger ones in the future, and I thank you for the attention which you have given to my remarks.

The Cost of Litigation.

THE subject is, of course, perennial, but two or three recent judicial pronouncements may suggest fresh angles of vision. Mr. Justice MCCARDIE, after testifying his belief that the English judicial system is the best in the world, appealed to counsel and solicitors to work it with efficiency and goodwill, and the desire to save expense, so as to "give it a dignity that it has never even yet reached." Again, Mr. Justice ROCHE, in commenting on the activities of "some philanthropist or other," who has employed a sandwichman to patrol outside the courts with the legend "Don't litigate—arbitrate" mentioned that an arbitration had cost £119 on a £289 claim, "whereas the parties might have come to this court and have had the case set down for two guineas." And at Barnet County Court Judge CRAWFORD observed that £205 in costs in an undefended divorce case was not very creditable to the jurisprudence of this country.

Mr. Justice MCCARDIE'S remarks appear to have originated in the fact that the case before him, set down as a short cause in the Order XIV list, was nothing of the sort, and a similar case before another judge had already lasted eight days. As an abstract proposition, it is somewhat difficult to see how the wrongful classification of a case as a short cause, exasperating as it must be to the next litigants awaiting their turn on the list, is a practice tending to increase legal costs. One would rather suppose that it would act in the opposite direction, for counsel would surely receive smaller brief fees on the short cause. The hard swearing on Order XIV cases on both sides is notorious, but it is done by the litigants, and counsel and solicitors can hardly turn on their clients and tell them they are liars before the fact becomes evident in open court. Order XIV is, itself, a device to save expense, and neither the plaintiff who misuses it, nor the defendant who perjures himself to take a case out of it, and so gain time, can complain of any extra expense involved in failure to adopt the ordinary procedure in the first instance, or to submit to it as the case may be.

In an interesting leading article recently, *The Times*, commenting on the conclusion of the London Chamber of Commerce, no doubt well founded, that English justice is more expensive than Continental, points out the extreme delicacy and intricacy of our legal machinery for ascertaining the truth. As a happy illustration, the writer suggests that we weigh our cases in a goldsmith's balance, while elsewhere people may be content with the kitchen scales. Mr. Justice ROCHE'S observations as to setting down a case for two guineas might, perhaps, be countered by his adversary by a reference to the White Book, showing the vast possibilities of expense in an action, from the issue of a writ (usually preceded by counsel's opinion that the action lies) to the enforcement of the final judgment. In some actions counsel's fees may form quite a small proportion of the bills of costs, and expert witnesses are often much more expensive than barristers.

The Press gives much prominence to the fact that a few eminent barristers may earn incomes on the scale of commercial magnates or captains of industry. It is fairly safe to say, however, that there is no fiercer competition in the world than at the English bar, and solicitors, as business men, and knowing that their clients usually look at the sum total of a bill of costs as the measure of their account for services rendered, do not give fancy fees to a barrister for his beautiful eyes. In certain patent actions, disputes on big contracts, issues between local authorities, or revenue cases, counsel's fees in four figures may be a fraction of the value of the subject-matter in dispute, and such cases may involve months of hard work, especially for the junior counsel involved. In just a few libel or divorce actions, rich people may be content to pay large fees to successful barristers if their reputations are at stake, but they are not common. At the criminal bar, a thousand guinea fee is a most extreme rarity, and much of the work of defending prisoners is done for nothing. And, respecting the other side of the picture, probably the officials of the Barristers Benevolent Association could testify very eloquently, but they are pledged to silence.

Mr. Justice MCCARDIE'S appeal to counsel and solicitors to save expense in litigation may, perhaps, be countered by the suggestion that he should be more explicit. No doubt counsel should refrain from representing or certifying long actions as short causes, but, even if they do so refrain, the problem is not solved. There are probably hundreds of young barristers, many of them able men, who would be only too thankful to earn a guinea a day, and solicitors have their pick of them. Those who send in big bills of costs risk the loss of their clients. In fact, the ordinary economic laws compel both branches of the profession to work the present practice as inexpensively as possible.

The conclusion must be that litigation cannot be substantially cheapened unless the practice is drastically altered. As it is, expensive legal machinery ensures that issues shall be presented to a judge or judge and jury, as the case may be, so that the evidence shall be of the highest possible value, and the smallest waste of public time is involved. In complicated cases, pleadings may save hours or even days of the court's time, and in the long run, expense, though at first they may appear costly, since considerable skill is required to draw them. The spade-work of solicitors in drawing instructions for counsel, obtaining proofs from witnesses, etc., is all ultimately labour to the same end, namely to assist the court and shorten proceedings. *The Times* writer suggests that the

somewhat costly process of discovery, unknown to most of the continental systems, might perhaps be abolished, at the possible cost of "a rogue here and there profiting by withholding something to his disadvantage." This would be a matter for the Rules Committee. Whether the abolition of Order 31 is practicable is a matter which would require very serious consideration. It may be observed that s. 12 gives the court the general power to consider whether discovery is necessary, so the expense is at least under control.

Arbitration is not, of course, new, and the relative advantages of arbitration and litigation should by now be well understood. Arbitration is conveniently regulated by the Act of 1889, and, in the vast class of contracts for fire insurance, is practically made compulsory or insured by insurers. Arbitration to settle a pure question of law, such as the construction of a document when all the relevant facts are agreed, is hardly appropriate, though an undertaking to abide by counsel's opinion, when all parties are *sui juris*, will save expense. Possibly trustees should be given larger powers of acting and relying on counsel's opinion; they may have some protection under s. 61 of the Trustee Act, 1925 (superseding s. 3 of the Judicial Trustees Act, 1896), but it is empirical (see *Re Allsop* [1914] 1 Ch. 1). If a dispute rises on a pure question of value, arbitration is usually, though perhaps not invariably, the better method. Where the dispute involves, as it almost invariably does, if serious, a conflict of evidence as to what has actually happened, our machinery of litigation is, with all its imperfections, probably the best method man has ever devised of ascertaining the truth. To this end civilised nations have laboured through the ages. Examination, cross-examination and re-examination, tedious though they may be while the judge makes his longhand notes, are better methods than the "ordeal by battel," or witchcraft, and SOLOMON's brilliant improvisation is not applicable to every case. The importance of the preliminary work, however costly, in narrowing and defining the issues to be considered, may be understood by anybody who takes the trouble to read the second BRAVO inquest, where there was no check on side issues and irregular evidence. If evidence is to be sifted properly, an arbitration tribunal must be assisted by persons accustomed to deal with it, whether barristers or solicitors, and their time and skill must be paid for. In the long run such a tribunal, though it may take some short cuts not open to a court, can hardly be much less expensive. It seems also likely that perjury, although equally punishable in either case, is more difficult in open court than in private.

As to Judge CRAWFORD's observation on £200 costs for an undefended case, the figure certainly appears large, but the word "undefended" is ambiguous. If it was a case where at the last moment counsel for the defence stated that he was not prepared to put his client in the box, it was undefended in a sense, but the costs up to that moment would not differ from those of a defended petition. Again, an entirely undefended case in the Divorce Court does not go by default, for the adultery alleged has to be proved affirmatively to the judge, the respondent's mere failure to deny it not being sufficient. Recently, too, the new requirement that the name of the respondent's woman companion in an hotel divorce must be stated in a petition may involve some expense, though at present there appears to be no evidential connexion between the woman at the hotel, and the one named, who does not find it to her interest to intervene.

Litigation which is so expensive that the mere idea of it alarms would-be litigants is so obviously against the interests of both branches of the profession, that credit might be given to their members to do everything in their power to avoid such a state of things even if their inherent desire for justice is marked down to zero.

Mr. C. H. Denyer has retired from his position as chief clerk of the North London Police Court.

Companies as Owners of their own Shares.

By PHILIP J. SYKES, Barrister-at-Law.

IT is sometimes stated that a company cannot own its own shares, but that a statement of this sort is a generalisation rather broader than is warranted by the law on the subject is shown by the case of *Kirby* v. *Wilkins* [1929] 2 Ch. 444. The inevitable starting point of any discussion with regard to the ownership of its own shares by a company is now the case of *Trevor* v. *Whitworth*, 12 A.C. 409, which authoritatively sets out the basic principles governing this branch of the law.

Trevor v. *Whitworth* was a case where a company's articles expressly conferred on it a power to purchase its own shares, but the purported exercise of such power was held by the House of Lords to be *ultra vires*. The grounds of the decision and the principles therein contained are to be found enunciated in "Buckley on the Companies Acts," 11th ed., at pp. 102 and 103, in language expressly approved by ROMER, J., as he then was, in *Kirby* v. *Wilkins*, *supra*. Very briefly to attempt to summarise this enunciation, one may say that there are five cardinal points which emerge: (1) A purchase of shares is neither forfeiture nor surrender, both of which may, in some circumstances, be justified, but where money is paid or consideration given by the company it is a purchase; (2) a company cannot be a member of itself; (3) a purchase of its own shares by a company is an unauthorised reduction of capital; (4) it is also a return of capital to members; (5) it cannot be justified as being incidental to the company's objects.

Now in *Kirby* v. *Wilkins* the facts were these: four partners sold their business, including the stock-in-trade, to a limited company in consideration of the allotment to them of fully paid shares in the company. Subsequent to the completion of the sale it was found that the stock-in-trade had been by mistake considerably over-valued. There was no suggestion of fraud or improper representation, and there was no right to rescind the sale agreement, and no right of action for damages in the purchasing company as a result of this mistake; the vendors, however, wanted to put the matter right, and 3,000 of the shares allotted under the sale agreement, representing the amount by which the stock-in-trade had been over-valued, were transferred by the vendors to the chairman of the company, upon trust, as was held by ROMER, J., for sale at his discretion, and pending a sale, for the benefit of the company. This transfer was, owing to the fact that the company was without any legal remedy with regard to the over-valuation, a purely voluntary one on the part of the vendors.

After the transfer, an action was brought by two shareholders, one of whom was one of the vendors, for a declaration that the chairman held these 3,000 shares on trust for the individual shareholders of the company, and for an injunction to restrain him from voting, as regards their proportion of the shares, except as they might direct. ROMER, J., held, however, on the facts that the shares were held in trust for the company, and accordingly it became necessary to determine whether the transfer of shares to a trustee for the company was valid or not. After stating the principles of *Trevor* v. *Whitworth* from "Buckley," referred to above, and approving of the statement as correct, the learned judge held that the transaction in the case before him did not infringe any of those principles, and then went on to consider whether a transfer to a trustee for the company was as much open to objection as a transfer to the company itself.

On the ground that the transfer in this case was purely voluntary, it was held to be unobjectionable, though the judge indicated that had there been consideration for the transfer his decision might well have been otherwise. It was, however, further argued that if the transfer was held to be valid, the

result would be that the company would then be able to exercise a power of voting at its own meetings through the trustee in respect of the shares held by him, and that such a result could not be proper. As has been said above, a company cannot be a member of itself. This is found very clearly stated by JESSEL, M.R., in *Re Dronfield Silkstone Coal Co.*, 17 Ch. D. 76, at p. 83, where, after quoting s. 23 of the Companies Act, 1862 (now s. 25 of the Act of 1929), he says: "How can the company be a member of itself? . . . The purview of the whole of the Act, when you look at the sections relating to the winding-up, the mode of winding up, and the mode of enforcing contributions, is utterly inconsistent with the notion that the company can be registered as a member of itself."

It is not unimportant to mark that Sir GEORGE JESSEL there expressly refers to the registration of the company as a member of itself, and that there is nothing in the passage from his judgment quoted above which expressly deals with the equitable ownership by a company of its own shares. This passage was referred to by Lord WATSON in his speech in *Trevor* v. *Whitworth*, where he says that it is inconsistent with the essential nature of a company that it should become a member of itself. "It cannot be registered as a shareholder to the effect of becoming debtor to itself for calls," says Lord WATSON, at p. 424, "or of being placed on the list of contributories in its own liquidation." Again, it is the legal ownership of the shares which is there being discussed by Lord WATSON; but Sir GEORGE JESSEL and Lord WATSON have very much in mind the winding up of the company. It may well be that it was the problem of shares not fully paid up which was engrossing them, and indeed Lord WATSON states that a nominee for the company would remain liable for calls in a liquidation (thereby perhaps suggesting that such a transfer is not necessarily invalid); but *Kirby* v. *Wilkins* may produce a somewhat surprising result in a liquidation where there is a distribution to the shareholders, as is pointed out later on in this article. However, it was held in *Kirby* v. *Wilkins* that the transfer did not make the company a member of itself, and further that the company did not become a member of itself because the transferee voted in accordance with the directions of the company; and the learned judge also said that he could see no reason why shares should not be held upon trust that the holder of them should vote as directed by the company.

It may here be noticed that agreements to exercise voting rights in respect of shares in a particular way, or as from time to time directed, may be valid: *Greenwell* v. *Porter* [1902] 1 Ch. 530; and in a case where a mortgagee of shares had agreed to vote in accordance with the wishes of a mortgagor, and had subsequently refused to do so and threatened to persist in this attitude, a mandatory injunction was granted to compel him to vote as the mortgagor desired: *Puddephatt* v. *Leith* [1916] 1 Ch. 200.

As this objection on the grounds of voting was overruled the action failed and was dismissed; and the result may perhaps fairly be summed up by saying that fully paid shares in a company may validly be transferred to a nominee of that company, to be held by him for the benefit of the company, and the voting rights in respect of such shares may be exercisable by him only as the company directs, if, and only if, the transfer is purely voluntary. It may well be that circumstances such as those which were present in *Kirby* v. *Wilkins*, which rendered the transfer purely voluntary, are not likely to arise with any degree of regularity, for on transactions, or attempted transactions, of this kind there is usually present some form of consideration which makes the decision in *Kirby* v. *Wilkins* inapplicable. It is, however, a case of some general interest, and one which might lead to some curious results. For instance, at p. 454 in his judgment, ROMER, J., in dealing with the giving of directions to the nominee by the company as to how he should vote, suggests for the purpose the intervention either of the board of directors or of a general meeting of shareholders. Directions given by the board seem to present no difficulty, but the directions of a general meeting are not quite on all fours, and make one wonder how the nominee is to vote at the meeting called for giving directions to him as to how he is to vote, and so *ad infinitum*. The difficulties would not be lessened if the company actually acquired control of itself, but hypothetical cases of this nature may perhaps be ruled out of the sphere of practical politics.

On a winding up in such a case it seems that the shareholders other than the company will benefit to the extent of the holding of the company if and when there is any distribution to shareholders; for instance, where five shillings is being returned in respect of each £1 share, the sum which would otherwise be returned to the company in respect of its beneficial holding must surely be distributable among the shareholders other than the company in proportion to their holdings. This again appears somewhat strange, but seems to follow from the decision in *Kirby* v. *Wilkins* as a matter of course.

Defaulting Solicitors.

Sir J. J. Withers, M.P., has forwarded to us the following copy of a letter he sent on Monday to the President of The Law Society:—

Howard House, 4, Arundel-street,
Strand, London, W.C.2.
7th July, 1930.

DEFAULTING SOLICITORS.

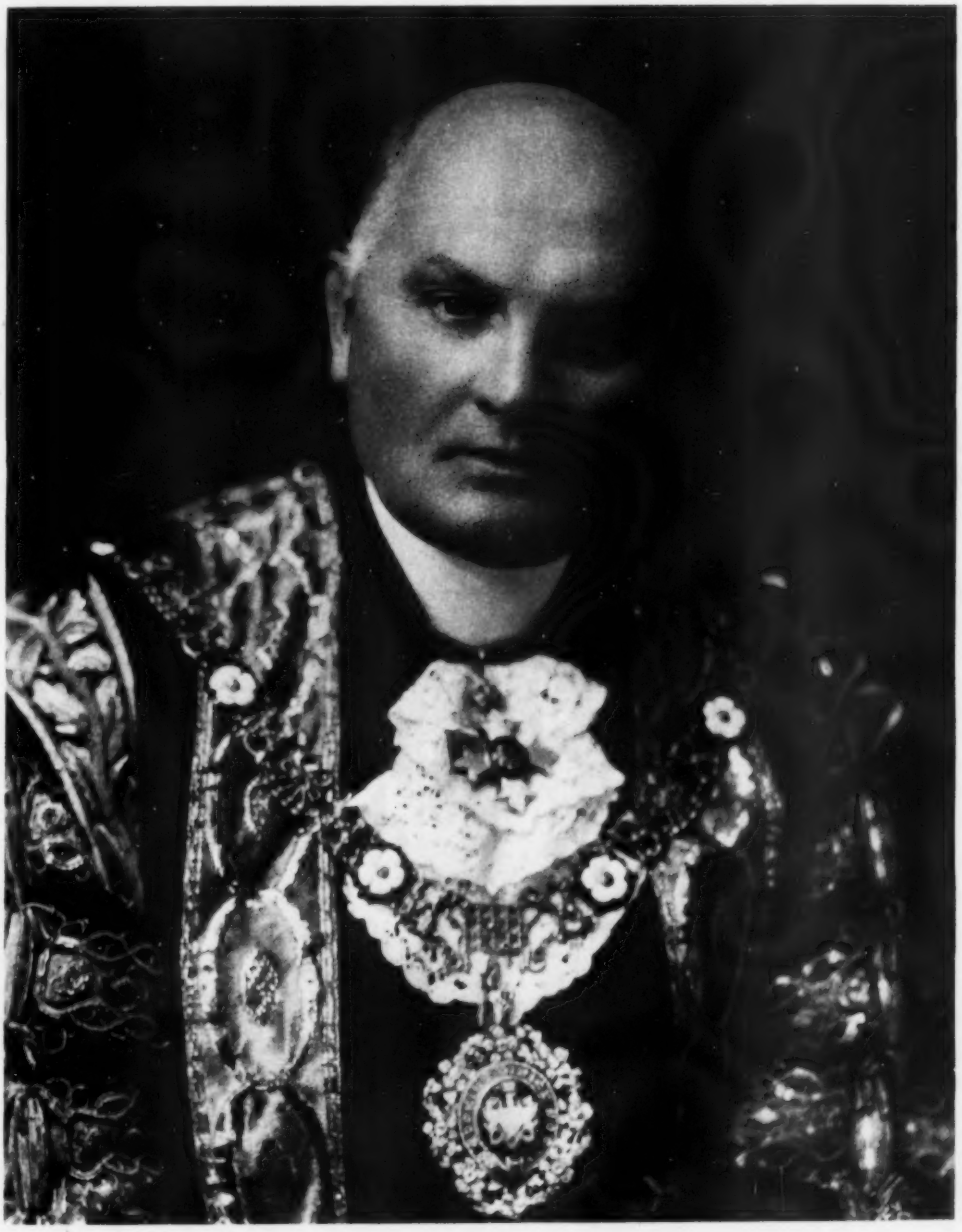
My dear President,—Twenty years ago, after a series of disgraceful defalcations by solicitors, some members of The Law Society, with whom I was associated, pressed for action to be taken by the society to prevent a recurrence of these serious scandals (*inter alia*) by regulations compelling solicitors to keep their clients' moneys in separate banking accounts. After a motion, defeated at a general meeting in the Hall, had been carried on a poll of the members of the society, a committee was appointed, but nothing effective resulted, and interest in the matter gradually evaporated.

Recently, after another disgraceful series of frauds, The Law Society was forced to take action by the introduction of a Bill in the House of Commons and a flood of questions addressed to the Government on the subject. On 9th May, 1930, the council, unanimously, if I remember rightly, passed the following resolution:—

> "This council are of opinion, with a view of promoting the discipline of the profession and the keeping of special accounts, steps should be taken to provide for the compulsory membership of the society, and that with that object, at the next meeting of the society instructions should be requested to promote a Bill for that purpose, and for the discipline of the profession and the keeping of special accounts."

I particularly draw your attention to the concluding words. A Bill was accordingly drafted, providing for compulsory membership of the society and the formation of a small charitable fund and empowering the society to make rules, with the concurrence of the Master of the Rolls, for the professional conduct and discipline of solicitors. It further provided that the society, with the like concurrence, should make rules (*a*) as to the opening and keeping of banking accounts into which a solicitor should pay the moneys of his clients, and as to the conditions under which such accounts should be operated; and (*b*) as to the keeping by a solicitor of accounts containing such particulars and information as to moneys received or paid for, or on account of, clients as may be prescribed by such rules.

I was prepared to support this Bill as the first constructive proposal which had been put forward, but, as you know, I



THE RIGHT HON. THE LORD MAYOR
ALDERMAN SIR WILLIAM WATERLOW, K.B.E.
Solicitor

expressed my opinion that the small charitable fund was of little value, and the direction to The Law Society to make rules as set out in clauses (*a*) and (*b*) above was illusory, because I did not think it would be possible to get efficient rules passed by the society. My reason for this last-mentioned opinion was that the members of the profession, eager as they no doubt are to do the best, are so habitually critical of every proposal that they cannot collectively initiate any constructive policy.

Unfortunately my opinion was correct, for, although the draft Bill was approved by the provincial law societies, at the general meeting of the society held on 4th July, 1930, the only two clauses of merit—namely, those set out as (*a*) and (*b*) above, were deleted with the concurrence of the authorities, and the Bill was, therefore, in my judgment, rendered useless.

In these circumstances, I have reluctantly come to the conclusion that The Law Society itself is unable to take the necessary steps to prevent a recurrence of the grevious defalcations of solicitors. This time matters will not be left as they are, nor allowed to be forgotten as before, and accordingly, as it is better that an efficient remedy should be proposed from within the profession than from without, I shall myself, as an individual, introduce a Bill into Parliament providing for the compulsory keeping of separate banking accounts for clients' moneys and annual audits.

As this action of mine is independent of the Council of The Law Society and may not be approved by them, I hereby tender you my resignation of membership of the Council, with grateful thanks for the great kindness and consideration I have always received from all my colleagues and the staff of the society.

I am, my dear President, yours truly,
JOHN J. WITHERS.

Alderman Sir William Waterlow, K.B.E., Lord Mayor of London.

WE have great pleasure in including in this number a portrait of Alderman Sir WILLIAM WATERLOW, K.B.E., Lord Mayor of London. The son of Mr. JAMES JAMESON WATERLOW, who died a few months before his birth, and a grandson of Mr. ALFRED JAMES WATERLOW, of Portland Place, and Great Doods, Reigate, and the Rev. J. LAWSON SISSON, Rector of Edingthorpe, North Walsham, he was born on the 24th April, 1871. Educated at Marlborough and in Germany, he was articled to Sir THOMAS PAINE, of the firm of Messrs. PAINE, SON & POLLOCK, Solicitors, St. Helen's Place, and he was admitted in 1896, when he joined the firm of FARRER & PORTER as managing clerk. He was subsequently invited to join the printing firm of WATERLOW BROTHERS & LAYTON, with the idea that he should look after the legal branch of their business, and some ten years later, the opportunity being offered him to turn his attention to the manufacturing side of the business, he was, in 1911, appointed sole managing director, remaining as such until 1920. Many large contracts were carried out by his firm for the Government during the war period, and in recognition of his valuable services in connexion therewith he was, in 1919, created a Knight Commander of the Most Excellent Order of the British Empire.

In 1920 the firm was amalgamated with WATERLOW & SONS LIMITED, and he continued for a few years with the new organisation, occupying for a short time the chairmanship of the board, which he resigned in 1927, finally severing his connexion with the company.

Early in the year 1914 Sir WILLIAM had been elected to the Court of the Common Council as a representative of the Ward of Cornhill, thus keeping up an old family connexion with this ward, both his great-grandfather and his grandfather having represented it on the Court of Common Council.

On the death, in 1922, of Sir EDWARD COOPER, Baronet, Alderman of the Cornhill Ward, Sir WILLIAM was invited by many of the electors in the ward to allow himself to be nominated for the vacancy, with the result that he was returned without a contest. He served the office as Sheriff in 1928-29, and his election as Lord Mayor of the City of London took place on the 28th September, 1929, the day on which he went out of office as Sheriff. As a result of his election to the aldermanic bench, he was invited by the Court of the Stationers Company to take a seat on their court, an invitation of which he, as an active member of the Livery, at once availed himself, filling in due course the offices of Junior Warden and Senior Warden, and attaining to the Mastership of the Company in the same year as his Mayoralty of the City.

It is generally admitted that SIR WILLIAM is discharging the responsible duties of his many offices, both as Lord Mayor and as Master of the Worshipful Company of Stationers, in a manner in which it is given to few men to equal. It is said that he never missed a meeting at Stationers' Hall, despite the multifarious duties which he has had to undertake as the Chief Magistrate of the City of London.

He was Festival President of the Printers' Pension Corporation in 1921, and is, at the present time, President of the Royal Commercial Travellers' School at Pinner. He is a member of the Council of Marlborough College, and has been President of the Marlburian Club.

An energetic man of large physique, he played rugby football for his county (Middlesex) until he was thirty-two.

The Recorder of London described him to the Lord Chancellor in the following words: "Personally, his judgment is sagacious; his standard of honour lofty; his sense of duty imperious; his nature reserved; his heart tender. Loathing injustice, with an impartial mind and legal training, he should make a wise Chief Magistrate of the world's chief city."

In 1904 he married ADELAIDE HAY, second daughter of THOMAS GORDON, Esq., of Grosvenor Street, Edinburgh, and they have two sons, who were both educated at Marlborough and Trinity College, Cambridge; the elder, after attending the London School of Printing, was appointed to a position on the staff of the Amalgamated Press Printing Works and the younger is still at Cambridge.

Sir WILLIAM has taken out his practising Certificate for the past thirty-four years, and is a member of The Law Society.

H.

Auctioneering Notes,

THE annual provincial meeting of the Auctioneers and Estate Agents Institute held in Brighton during three days this week was a great success. Founded in 1866, the Institute is now rapidly approaching its Jubilee year. Commencing its career in a small way, it now has a membership roll of over 6,300, and possesses its own freehold premises on a fine site in Central London. The annual provincial gatherings have long been an outstanding feature of the Institute; they afford a unique opportunity of combining business with pleasure, and of promoting that good fellowship which is so conducive to the success of such an organisation.

Of most interest to outsiders, particularly those who invest or speculate in real property, was the presidential address. The chair this year is occupied by Mr. G. FREDERICK PAGE, of Kingston-on-Thames, who has acted as valuer for the compensation authorities of Surrey, and East and West Sussex, under the Licensing Act. For nearly forty years he has been joint Hon. Secretary of the Surrey Agricultural Association, and is also Honorary Secretary of the North Surrey branch of the Farmers Union. Experiences such as these, together with his wide range of activities as an auctioneer, gave much weight to the views that were outlined in his address.

In view of the recent troubles in the stock and share markets of London and New York and the vagaries of the bank rate, the careful investor, in the opinion of the President, wisely

turns to real estate as being, after all, the safest and most satisfactory method of satisfying his requirements. The depression in the iron and steel trade has adversely affected the value of trade and factory premises, and there is little to be said in favour of large arable farms in purely agricultural districts, especially when the soil is of a heavy nature. But building land, pre-war cottage property and small urban residences continue to be in good demand. There is buying for speculation and investment, as well as for occupation.

It was only to be expected that the presidential address contained some reference to Empire Free Trade: "That such a policy, when made feasible by the real co-operation of India, British Dominions beyond the seas, and the Colonies generally, may prove of great benefit to the people and industries of Great Britain, is quite probable, but much time must pass and many almost insurmountable obstacles be overcome before any such policy is likely to be a workable proposition."

When a property becomes de-controlled, and a new tenant is sought for, what is a reasonable addition to the pre-war rental? This is a question that frequently agitates property owners. In fixing the new rentals, the owners incur a large responsibility; for if they are disposed to profit by local circumstances, and make these excessively heavy, they will be piling up arguments in favour of a further lease of life to the Rent Restriction Bill. The man in the street says that once control is removed, up will go rents; while the owners say that once the obnoxious measure is removed from the Statute Book, things are sure to right themselves. Circumstances, of course, alter cases, and there may be instances in the case of small house property where double the pre-war rent is not too much; but there appears to be a general feeling that a 40 per cent. rise ought to meet the merits of the case. What is wanted is a uniform policy, and this can only be directed by an organisation that commands universal respect.

For some years past it has been difficult to find a purchaser for a large country mansion—one that is far removed from a railway station or industrial centre. Farms and agricultural holdings have found purchasers readily, because the owners realised the time of fancy prices had passed; and no sooner is an urban residence, offered with the option of entry, put up for auction than it is sought after by eager competitors. But, with the exception of local and scholastic authorities, no one seems to want the big rural mansion.

In spite of publicity and the efforts of the professional organisations to damp his ardour and get even with his cunning, the mock auctioneer is still a nuisance to be reckoned with. His latest method of hoodwinking the public deserves wide publicity. A year or two ago he carried on his business—which was generally in a shut-up shop—and bidders took him just as they found him—in his shirt-sleeves. Nowadays he fills his shop window with coloured posters enumerating the variety of lots on sale, all the property of some unfortunate shopkeeper who was unable to make ends meet. At the foot is the name of the firm in occupation, with a lot of letters after it that mean nothing to the man "in the know," but a great deal, perhaps, to the domestic servant. The address, too, is sure to be an impressive one; but although the district is all right it is more than likely that headquarters are represented by a single furnished room on a top floor.

There is no doubt the nuisance will be with us always, until auctioneers, like solicitors and chartered accountants, have to pass an examination before they are allowed to practise.

Part of the estates of the Duke of Montrose has been purchased by the Crown Land Commissioners, and the purchase money has been remitted to the Inland Revenue as part payment of death duties. It must not be thought, however, that because the Commissioners had accepted the Duke's offer they are prepared to do so in any other case that may arise. The land which has been purchased is an agricultural estate and will be administered by the Crown as such.

A Conveyancer's Diary.

By HERBERT W. CLEMENTS, Barrister-at-Law.

Applications to Discharge or Modify Restrictive Covenants.

The law with regard to restrictive covenants and the incidents, burden and benefit thereof has from time to time been discussed in this column, and I propose in this article to follow up the consideration of the subject by dealing, in, I hope, a practical form, with the method provided by the L.P.A. for obtaining the discharge or modification of such covenants.

The provisions of the L.P.A., 1925, s. 84, are no doubt well enough known, but I venture to think that it has not yet been fully realised how beneficial the section may be. I have no statistics to quote, but I think it is the fact that whilst there have been many applications under the section and their number is increasing, it has not been so widely taken advantage of as might have been expected. Probably this is, to some extent, due to the fear of incurring costs, and especially of being involved in expenses which cannot with any reasonable degree of accuracy be estimated beforehand. I think that I shall show in this article that that particular deterrent to embarking upon legal proceedings does not apply, or, at any rate, only applies to a comparatively small degree in the case of applications under the section, and that the simplicity of the procedure with other advantages which are apparent to those who have had practical experience of the working of it, renders the section of more practical value than seems to have been so far recognised.

The section is rather lengthy. The main provisions are in sub-s. (1), the remaining eleven sub-sections being ancillary.

Sub-section (1) reads as follows:—

"The Authority hereinafter defined shall (without prejudice to any concurrent jurisdiction of the court) have power from time to time, on the application of any person interested in any freehold land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon, by order wholly or partially to discharge or modify any such restriction (subject or not to the payment by the applicant of compensation to any person suffering loss in consequence of the order) on being satisfied—

"(*a*) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the Authority may deem material, the restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land for public or private purposes without securing practical benefits to other persons, or, as the case may be, would unless modified so impede such user; or

(*b*) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed, have agreed, either expressly or by implication, by their acts or omissions, to the same being discharged or modified; or

(*c*) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction:

"Provided that no compensation shall be payable in respect of the discharge or modification of a restriction by reason of any advantage thereby accruing to the owner of the land affected by the restriction, unless the person entitled to the benefit of the restriction also suffers loss in consequence of the discharge or modification, nor shall any compensation be payable in excess of such loss; but this provision shall not affect any right to compensation where the person claiming the compensation proves that by reason of the imposition of the restriction, the amount of the

consideration paid for the acquisition of the land was reduced."

In effect, therefore, there are four grounds upon which the application may be based, which may be shortly stated to be (1) that the restrictions are obsolete; (2) that the restrictions, whilst impeding the reasonable user of the land, confer no practical benefit on anyone; (3) that there has been some express or implied release or discharge of the restrictions; and (4) that by discharging or modifying the restrictions no injury will be done to those entitled to enforce them. Any one of these grounds will suffice.

The application should be made in accordance with the Law of Property (Restrictive Covenants Discharge and Modification) Rules, 1925. Under those Rules the proceeding is initiated by a written application to the Reference Committee to appoint an arbitrator. There is a form given in the Schedule to the Rules, and I do not think that much difficulty arises in completing it and giving the required particulars. The only difficulty which at first sight presents itself is that the names and addresses of those entitled to enforce the covenants are required to be given. That, of course, in the great majority of cases, cannot be done, but the particulars are only required to be stated so far as known to the applicant, and it will be sufficient to state that the person so entitled is the covenantee under a certain deed, or his assigns, or as the case may be. If there are persons who are known and whose right to the benefit of the restrictions is not disputed their names and addresses should be stated. The Reference Committee nominates the arbitrator who decides what notices shall be given by advertisement or otherwise to persons who may be interested. Notice is invariably directed to be given to the local authority.

The time for making claims having expired, the application comes before the arbitrator on a day fixed by him.

It will, of course, often happen that there will be claimants whose right to enforce the covenants is disputed by the applicants, but it will generally pay the latter to admit such claims for the purposes of the application only, and so avoid the expense of having the question determined by the court. The arbitrator has no power to decide questions of right, but it must be remembered that the basis of the application is that, although the right to enforce the restrictions exists, the relief should be granted on one of the stated grounds. It can, therefore, generally do no harm to admit the right of claimants for the purpose only of the application.

One great advantage of these applications is that all persons, whether claiming or not, are bound by the order of the arbitrator (subject to appeal), and the applicant knows before the hearing with whom he has to contend and on what ground the opposition or claim to compensation is based. That in itself is a considerable gain, for frequently an owner of land burdened with restrictions does not know, and has no means of ascertaining, all the persons who may be entitled to enforce them. Knowing who the claimants are, the applicant is in a position to negotiate with them if he thinks it worth while.

In most cases, in fact I suppose in every case where there is any opposition, the arbitrator views the premises. Generally the view will settle the matter and enable the arbitrator to make up his mind whether the application is one that should be granted or not.

There is a useful provision in sub-s. (6), which renders it unnecessary to produce at the hearing the instrument imposing the restrictions, and enables the arbitrator to act upon such evidence of that instrument as he thinks fit. This sub-section removes a difficulty which not infrequently occurs.

The arbitrator makes his order in the form prescribed by the Rules. Where compensation is awarded the order does not take effect until it has been endorsed by the arbitrator with a certificate that the compensation has been paid. It seems to follow that the applicant can simply drop the matter if he thinks that the compensation awarded is more than it is worth his while to pay. As a matter of fact, however, it will be found that, in almost every case, the order will either be made without compensation or not at all, except where the compensation has been agreed upon.

There is an appeal from the order to a judge of the Chancery Division (sub-s. (5)).

One very important point with regard to these applications is that the arbitrator has no power to make any order as to costs.

Claimants, therefore, although successful in opposing the application or in obtaining compensation, must in all cases bear their own costs. This is, I think, of no little practical importance because it tends to deter persons who might otherwise do so from making claims, and also enables an applicant to estimate with more certainty what the proceedings are likely to cost him.

The fees payable are £1 on application and £10 10s. a day (five working hours) for the hearing, a view counting as part of the hearing. If compensation is awarded the fee for hearing is a scale fee of not less than £10 10s. (which includes the fee for the first day's hearing) and £10 10s. for each day or part of a day of hearing after the first. In addition, of course, there are the expenses of notices and advertisements directed by the arbitrator.

Sub-section (9) provides that, where an action is proceeding to enforce restrictive covenants, the court may, on the application of the defendant, stay the proceedings in order that an application may be made under the section. It seems, however, that such an action will only be stayed where it is intended to apply for a modification of the covenants, and not where it is sought to have them discharged on the ground that they are obsolete or that there has been an express or implied release (see *Fielden* v. *Byrne* [1926] Ch. 620).

Landlord and Tenant Notebook.

By R. BORREGAARD, Barrister-at-Law.

Restrictions on Contracting Out.

"Public policy," said Sir George Jessel, M.R., "requires that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by courts of justice": *Printing and Numerical Registering Co.* v. *Sampson*, 44 L.J. Ch. 705. This was said in 1875. In 1908, Farwell, L.J., remarks: "The doctrine of public policy is regarded nowadays as one for the legislature rather than the courts": *Hyams* v. *Stuart King*, 77 L.J. K.B. 796. The change can be amply illustrated by reference to legislation affecting landlord and tenant, in which the phrase "notwithstanding any agreement to the contrary," or words of similar effect, is now so common that the practitioner may be expected to have some general knowledge of the statutory provisions restricting freedom of contract, and of the interpretation placed upon them.

Of these, some affect all kinds of property; in other cases the enactment and the provision apply only to a special kind of tenancy. The former group includes the provision avoiding any agreement to pay "landlord's property tax"; this is not now avoided in terms, but the Income Tax Act, 1918, Sched. A, r. viii, and All Schedule Rules, r. 23 (2), bring about the same effect. The most far-reaching provision in this group is, of course, the regulation of the right of forfeiture to be found in the L.P.A., s. 146, and L.T.A., 1927, s. 18 (2). As was the case with the C.A., s. 14, which it replaces and extends, the avoidance of stipulations to the contrary is in the last sub-section. Except for the extensions, this legislation merely sanctions what had been the practice of equity for centuries, and the force of the restriction can best be appreciated by reference to older cases, such as *Doe d. Nash* v. *Birch*

(1836), 1 M. & W. 402, and *Bowser* v. *Colby* (1841), 1 Hare 109, in which provisions for the lease becoming null and void were construed as making it merely voidable.

The L.P.A., 1925, also provides for discharge of covenants restrictive of user (s. 84) in certain cases. Covenants which operate to prevent the conversion into flats may sometimes be varied or discharged by virtue of the Housing Act, 1925, s. 102: the relevant considerations were analysed in *Johnston* v. *Maconachie* [1921] 2 K.B. 239, (C.A.), in which it was held that whether the property was to be "working-class" property was irrelevant. And now the L.T.A., 1927, s. 19, imports into any covenant against alienation, improvement or structural alteration without consent a proviso that such consent is not to be unreasonably withheld. Another example of the present policy of Parliament is to be found in the L.P.A., 1922, s. 145, and Sched. 15, virtually avoiding covenants for perpetual renewal, past and future.

In surveying the various special tenancies in which freedom of contract has been interfered with, those within the Rent, etc., Acts come readily to mind; but as the legislation is temporary, details are outside the scope of this article. Comment may, however, be made on the device adopted in restricting the right to possession; this is achieved by modifying the jurisdiction rather than by the direct method of avoiding agreement. More lasting (presumably) is the provision now in the Housing Act, 1925, s. 1, defining the landlord's duties in the matter of repair of low-rental property. That his duties are not unlimited was demonstrated by Salter, J., in his judgment in *Jones* v. *Geen* [1925] 1 K.B. 659, at p. 668.

Tenancies of agricultural holdings are perhaps most widely affected by provisions avoiding contracting out; and it is interesting to note that the first Agricultural Holdings Act was passed in the very year when Jessel, M.R., uttered the words cited at the beginning of this article; that the Act was permissive; and that the wholesale contracting out that followed can be said to be responsible for the present policy. The statute now in force, the Agricultural Holdings Act, 1923, avoids contracts which contravene its restrictions on the determination of tenancies (s. 25); on its provisions as to freedom of cropping (s. 30); and on its numerous provisions as to compensation (s. 50); and an agreement at variance with the provisions as machinery and time for claims is thus avoided: see *Cathcart* v. *Chalmers* [1911] A.C. 246. The rights conferred on the tenant with regard to fixtures can, however, be validly contracted out of: *Premier Dairies Ltd.* v. *Garlick* [1920] 2 Ch. 17. The first three sections of the Allotments Act, 1922, relating to determination and compensation, all contain the familiar phrase "notwithstanding any agreement to the contrary."

Leases of industrial property are liable to be affected by such legislation as the Factory Acts, 1891, s. 7 (2), and 1901, ss. 7 (4), 14 (4) and 101 (8). In these cases, and in the case of some of the London building legislation, the policy appears to be to give the court a discretion in apportioning the expense occasioned by work ordered, some regard being paid to covenants. A number of cases on the principles by which the courts are guided in performing their invidious task were reviewed in our issue of 4th January last; of these the most recent, *Monro* v. *Burghclere* [1918] 1 K.B. 291 (C.A.), by applying the test of whether the parties contemplated the event, seems to echo, somewhat weakly, the dictum of Jessel, M.R.

Lastly, we mention business premises within the L.T.A., 1927, Pt. I; and here we have a compromise, for the avoiding section (s. 9) has a proviso attached, permissive of contracting out "for adequate consideration." In one case a landlord has already been able to claim the advantage of this proviso; the ultimate workability or otherwise of the section remains to be seen.

Our County Court Letter.

EJECTMENT OF LICENSEE ON CONVICTION.

THE grounds upon which the above may be ordered were recently considered in *Morse* v. *Darby* at Bungay County Court, upon an application for possession of the Falcon Inn, Beccles. The tenancy agreement was dated the 16th May, 1924, and the defendant had undertaken to conduct the house in such a manner that the justices' licence would not be refused. In consequence of complaints by the police, the plaintiff, in August, 1928, gave three months' notice to quit, but the defendant claimed the protection of the Rent, etc., Restrictions Acts. There were no further complaints until January, 1930, when the defendant was fined £5 for supplying intoxicating liquor during non-permitted hours, and a further notice to quit was given, expiring last May. Possession was then claimed on the ground that the police would probably object to a renewal of the licence, which was in grave danger. The plaintiff's evidence was that there had been frequent complaints of noise, but it was pointed out that this was no offence in an inn, and that the police had not given evidence, although they might have been subpœnaed. His Honour Judge Herbert Smith observed that he would have had no sympathy with the defendant if his conviction had been the culmination of a series of offences. In six years, however, there had only been one offence, and that had arisen out of a celebration on New Year's Eve, when customers had been converted into friends on payment of 1s. 6d., and had not paid for drink after 10 p.m. Although the defendant had been guilty of an offence under the Licensing Act, it did not follow that his licence was in jeopardy, and it was unreasonable to suggest that he had lost the protection of the Rent Restriction Acts. The application was therefore dismissed, but his honour recognised that the plaintiff was in a quandary, and pointed out that a fresh charge against the defendant could be followed by another application for possession.

The fresh evidence on any subsequent occasion would bring the case within *Harman* v. *Rees Powell and others* (1892), 65 L.T.R. 255, in which the defendant had been convicted twice in eleven months. The plaintiff thereupon served a notice under the then equivalent of the Law of Property Act, 1925, s. 146, and claimed to recover possession for breach of a covenant not to do any act whereby the licence "may be forfeited or the renewal thereof withheld." The county court judge at Merthyr Tydfil held that the two convictions had endangered the renewal, and he gave judgment for possession. The brewery company and the new occupier appealed, on the ground that the first defendant was no longer the lessee, and that the magistrates had in fact granted a renewal. The Divisional Court upheld the decision, and Mr. Justice Smith (as he then was) observed that the object of the covenant was that the tenant would not allow the licence to run into jeopardy. The force of the covenant did not depend on the licence being forfeited in fact, and a sufficient cause for possession arose in any events by which the word "may" might be read as "can" be forfeited. Mr. Justice Grantham concurred, and the appeal was therefore dismissed.

Relief from forfeiture may be obtained, however, by the procedure adopted in *Handcock & Co. Ltd.* v. *Rushe* (1896), 60 J.P. 633, in which the defendant had had one conviction for keeping a betting house. The plaintiffs claimed possession for breach of the usual covenant, and Mr. Justice Day refused relief and gave judgment for the plaintiffs at Cardiff Assizes. The defendant appealed on the ground that he had paid a high premium, and should be allowed to remain until he could sell his lease. The Court of Appeal (Lord Esher, M.R., and Lords Justices Lopes and Rigby) dismissed the appeal, but subject to the plaintiffs' undertaking that, if the licence were renewed and they obtained a premium from a new tenant, they would accept the court's decision as to the proportion to be paid to the defendant.

Practice Notes.

EXECUTORS' LIABILITY FOR NURSING EXPENSES.

THE above problem may sometimes arise in circumstances of peculiar difficulty, as illustrated in two recent cases. In *Comer* v. *Mullenger and another*, at Thetford County Court, the claim was for £36 against the executors of Rosa Comer, deceased, whom the plaintiff had nursed from the 5th November, 1927, to the 7th February, 1930. The plaintiff's case was that she was a maternity nurse and also the daughter-in-law of the deceased, who had asked the plaintiff to stay and look after her when she was taken ill, offering at the same time to pay the plaintiff 7s. 6d. a week for doing so. The plaintiff at that time had a baby, aged seven months, for whom it became necessary to engage a nursemaid. Corroborative evidence was given by a doctor, who had heard the deceased say: "You pay the doctor and then you will pay the others," but it was pointed out that the latter reference might have been to the undertakers. The plaintiff's husband stated that no amount had been mentioned, but his mother had repeatedly remarked that she wished his wife to be paid for her services. His Honour Judge Herbert Smith accepted the evidence for the plaintiff, and, on the question of a fair and reasonable amount, judgment was given by consent for £25.

In *Marshall* v. *Grimshire and another*, at Barnstaple County Court, the claim was for £50 against the executors of Elizabeth Grimshire, deceased, for services rendered in her last illness. The plaintiff had been a professional nurse before her marriage, and had rendered accounts which had not been disputed, the deceased having stated that, after her death, the plaintiff would be compensated. The defendants contended that the plaintiff was a distant relation of the deceased, and, as a good-natured woman, had performed various services for the deceased without any professional consideration. His Honour Judge Lindley held that the greater part of the plaintiff's services were not rendered professionally, but that she was entitled to some remuneration. Judgment was therefore given for £20 and costs.

PRACTICE POINT IN LIBEL.

AN interesting point on privilege in libel actions came before the Court of Appeal recently (*Dembinsky* v. *T.C.S., Ltd.*). An action was brought by Mr. Dembinsky against T.C.S., Ltd., in respect of certain transactions which had taken place between them. During the course of that action a certain letter was written by the solicitors for the defendants, the T.C.S., Ltd., to the solicitors for Mr. Dembinsky, making certain allegations against Mr. Dembinsky. On that letter a writ for libel was issued by Mr. Dembinsky against the T.C.S. company. In the libel action the defendant company pleaded privilege, both qualified and absolute. As to the qualified privilege, the plaintiff interrogated the defendants as to malice, and the interrogatories allowed in the *Plymouth Case* were allowed in the present case. But, in answer to them, the defendants claimed privilege on the ground that any letters which they had written, any answers which they had received, or any information which was in their possession about the plaintiff, were letters and answers and information of a confidential nature, obtained for the purpose of acquiring evidence in connexion with a case, and of obtaining legal advice. They claimed, therefore, that they were privileged from answering those interrogatories. Master JELF held, after reserving his decision, that the objection was sound, except that the defendants must state whether they had any information and whether they believed it to be true. On appeal to Mr. Justice CHARLES, in chambers, his lordship upheld the Master, and the Court of Appeal have now upheld the judge.

Mr. C. H. WATERLAND MANDER, Solicitor, has been appointed Clerk to the Curriers Company.

Correspondence.

The Law Society's Bill.

Sir,—I have taken out the annual certificate to practise for fifty-two years, dropping it last November.

I am not now a practising solicitor (and at eighty-two shall not resume), and cannot derive a penny from my name—like a vast number of others—still being on the "Roll of Solicitors."

I am, practically, only a former solicitor, and I object to the wording of cl. 1 of the proposed Bill.

It should read thus:—

> "Every person who now has or hereafter shall have a Certificate entitling him or her to practise and be remunerated as a solicitor shall by virtue thereof and only during its currency become or be a Member of The Law Society."

Retired and uncertificated solicitors should not be compelled or compellable members of the society, or be made subject to the proposed Bill, which, obviously, should only apply to the practising solicitors of the present time and of the future.

Unless any Act following the Bill makes it clear that it does not apply to persons who formerly were but are not now legally practising solicitors it must be opposed, and we shall of course cease to support the Society's funds with our now continued annual subscriptions.

I enclose my card.

9th July. FORMER SOLICITOR (RETIRED).

Should Income Tax wrongly paid be Refunded?

Sir,—I have read with interest the Topic in your last issue dealing with the question whether income tax wrongly paid should be refunded.

I observe you support the refusal of the authorities to refund tax so paid, on the ground that as the taxpayer's "final receipt" protects him from further demand in the absence of fraud or concealment, so the Crown should have the like protection.

I am wondering whether you have considered the effect of s. 125 of the Income Tax Act, 1918, as amended by s. 29 of the Finance Act, 1923.

It appears to me that in view of the provisions of these sections, it is the Inland Revenue who "have it both ways," inasmuch as whilst the taxpayer has only twenty-one days to appeal from an assessment, the revenue have six years from the expiration of the year of assessment to make additional assessments.

In a case in which I was concerned, the assessment had become binding a few months before the decision in an exactly similar case that tax was not in fact payable and consequently repayment of tax was refused.

In the case you put, had the Inland Revenue, before the decision, decided to withdraw the claim, it is clearly open to them at any time within six years from the expiration of the year of assessment to make an additional assessment should the court decide in another case within that period that such a claim is well founded.

Strand, W.C.2. H. LYELL.

8th July.

[Our point was, of course, that an account which bound the Revenue should also bind the taxpayer. If then on the third reading of section 125 ("that a person chargeable has been allowed," etc.) the Revenue authorities could make an additional assessment, and would not be estopped by their previous admission on a point of law, we agree that in the circumstances the taxpayer would have a grievance. In respect of entirely undisclosed income, however, the Crown's power of further assessment should obviously continue for more than three weeks.—ED., *Sol. J.*]

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Deduction of Tax from Dividends.

Q. 1948. Limited companies are now deducting income tax at 4s. 6d. in the £ from dividend warrants relating wholly or principally to the period antecedent to 5th April, 1930. I have a sample before me. It is a warrant dated 30th April, 1930, for a final dividend "for the year ending 28th February last, £52 10s., less income tax at 4s. 6d. in the £, £11 16s. 3d.—£40 13s. 9d." Can you say under what authority the extra 6d. income tax contemplated in the not yet enacted Budget proposals can be deducted from the past fiscal year's earnings? Surely the companies paid for the past year last January, and at 4s. in the £. Can they deduct from the shareholders 4s. 6d.?

A. The authority for deducting tax at 4s. 6d. from dividends is the resolution of the House of Commons passed in Committee of Ways and Means on 14th April. The dividends paid after 5th April, 1930, are the income of the recipients for 1930-31, to which the resolution refers. The fact that the companies paid tax at 4s. in January, 1930, does not affect the position, as that tax related to the financial year 1929-30. While the profits distributed this year may have been earned last year—or in an earlier period—they represent income of the recipient for the year in which they were paid.

Detention of Child.

Q. 1949. In December of 1917 Mrs. A, who had three children, lost her husband and became penniless. She was forced to work for her living, and two of the children were sent to a home. The third, a daughter aged three, at that time was taken by Mrs. A's brother to be looked after by him. Since December, 1927, the brother has looked after the child and Mrs. A has paid him consistently sufficiently for the child's board and food and for the child's clothes and has met every expense on behalf of the child. The mother now desires to send the child to school, but the brother is unwilling to give up possession of the child, although repeated efforts have been made by Mrs. A to obtain possession. It is proposed to take proceedings, if necessary, under s. 56 of the Offences against the Person Act, 1861. Please advise the speediest method in which Mrs. A may obtain possession of her child and generally as to the position.

A. The Offences against the Person Act, 1861, s. 56, is not appropriate to the above facts, as, although the child is "detained," this has apparently not been done "unlawfully, either by force or fraud," as specified in the section. Mrs. A should apply to the magistrates under the Guardianship of Infants Act, 1925, s. 7, for an order under the Act of 1886, s. 5, that the custody of the infant be given to herself. Under s. 1 of the Act of 1925, the court shall regard the welfare of the infant as the first and paramount consideration, but even that will hardly justify the court in depriving Mrs. A of the custody, as she has met every expense on behalf of the child. For the same reason, the brother will have difficulty in pleading an express or implied agreement for the adoption of the child by himself.

Annuity to Testamentary Guardian.

Q. 1950. A client of ours desires to appoint by will a guardian of his infant children to act as guardian after the death of our client's wife. He desires to appoint a spinster and to provide that in the event of her marrying during the guardianship her guardianship shall cease and another shall take her place. We can find no provision under the Guardianship of Infants Acts, 1886 or 1925, by virtue of which a guardian can be appointed for a limited time only. Will you kindly inform us whether you know of any authority on this point? Our client also desires to give the party in question an annuity which, of course, will cease in the event of the person named ceasing to be guardian by virtue of marriage. Assuming that our client has the right to appoint a person to be a guardian until such date as she marries, a further question arises as to whether he could give such guardian an annuity to cease on her marriage. Would the provision be good or would it be void as operating in restraint on marriage?

A. An appointment of a guardian for a limited time was upheld in *Selby* v. *Selby*, 2 Eq. Cas. Abr. 488, where a testator appointed his wife guardian of his children during widowhood, and the guardianship therefore ceased on her re-marriage. This decision must now be considered in the light of the Guardianship of Infants Act, 1925, in the case of a wife, but the principle of conditional appointment is not affected in the case of strangers. The client has, doubtless, been made aware of the fact that, whatever he may direct in his will, his widow will have equal rights with the guardian, and may also appoint another guardian by her own will, under the above Act. The opinion is given that the proposed annuity will not be void as being in restraint of marriage, as the primary object of the annuity is to protect the testator's child, as in *Potter* v. *Richards* (1855), 25 L.J., Ch. 488. Vice-Chancellor Kindersley there upheld the gift of a life annuity, provided the legatee remained single, as the proviso was intended to prevent the child from being neglected. The condition was not a mere wanton restraint on marriage, but was incorporated with the gift, and therefore valid.

Distress upon Hired Goods.

Q. 1951. I am unable to understand upon what principle a professional brother contends that a landlord's right of distress is defeated in the case of chattels upon the premises under simple hire. He admits that the landlord has a right to take goods on the premises under a hire-purchase agreement. Is he right in his contention, and if so, on what principle?

A. The landlord's right of distress is not invariably defeated in the case of chattels upon the premises under simple hire, as the common law rule is that all movables on the premises are liable to seizure. The question therefore arises whether the hired goods are within any of the numerous statutory exceptions to the above rule. The Law of Distress (Amendment) Act, 1888, provides (for example) that "implements of trade" to the value of £5 are exempt, and it has been held that articles hired for use in the support of the tenant and his family are exempt, even though they are worth more than £5, if there are no other goods upon which to levy. Therefore, a sewing machine, worth £8 10s., was held to be protected in *Churchward* v. *Johnson* (1889), 54 J.P. 326, and a cab worth £25 was also held immune in *Lavell* v. *Richings* [1906] 1 K.B. 480. Further investigation is therefore required as to the purpose for which the goods were hired.

Administration—Error of Money Order Department in Valuing War Savings Certificates.

Q. 1952. A client of mine took out letters of administration to the estate of his brother. Included in the estate were war saving certificates and he forwarded the said certificates to the money order department for valuation. In due course they valued the estate, and letters of administration were granted

to my client. On the 29th ultimo the Controller of the Money Order Department wrote to my client stating that an error of £160 was made in the valuation. He pointed out that a corrective affidavit was necessary and apologising for the error and the inconvenience occasioned to my client. It now means that I have had to prepare a corrective affidavit, and it will be necessary for me to obtain the certificate from the Registrar of the Probate Division in which the grant was obtained showing that security has been given sufficient to cover corrected gross assets, and after this is done I will have to prepare further accounts to account for the additional legacy duty. This throws on my client a considerable amount of expense as the costs in all these matters will have to be paid to me. I suggest that the costs in this matter should be borne by the department responsible for the mistake as my client acted on their valuation. Do you think this will be possible ?

A. No, we cannot imagine the Money Order Department paying the expenses. Possibly, however, on explanation to the Estate Duty Department that the error was due to the other Government department a blind eye would be turned to the question of additional security, and there would only be a formal filling up and signing of corrective affidavit. It might, of course, be said that the solicitor, who is entitled to a fee for "Instructions for affidavit," should have been able to spot a mistake of the magnitude of £160.

Charity—S.L.A., 1925, s. 29—Scope.

Q. 1953. We are acting for the purchaser of land from the governors of a certain school foundation (founded many years ago), who have obtained a recent order from the Board of Education under the Charitable Trusts Acts, 1853 to 1925, authorising them, within three years from the date of the order, to sell the said land. The title of the governors is quite in order, but their solicitors are proposing to convey the land as ordinary trustees, whereas we are wondering whether they ought not to convey under the powers conferred on them by the S.L.A., 1925, s. 29, which says that all land vested in trustees for charitable or public trusts or purposes shall be deemed to be settled land. The section says this shall be so "for the purposes of this section." We are not quite clear what the purposes of the section are, unless it is to give charitable trustees the powers conferred on a tenant for life under the Act. And, if those powers are merely additional to their other powers, it would not appear to be necessary that a conveyance under the S.L.A. need be taken.

A. We express the opinion that the powers conferred by S.L.A., 1925, s. 29, are merely additional to such other powers as the trustees of the charity may possess, and that there is no reason why the conveyance should not be carried out under such powers as the trustees have apart from the section, provided that the conveyance states that the land is held upon charitable, etc., trusts, and that (as appears to be the case) the requisite consents or orders are obtained. We would observe that if (apart from the section) the trustees have only a power of, as distinct from a trust for, sale, the power is no longer effective to pass the legal estate (L.P.A., 1925, s. 1 (7)). See *Re Booth & Southend-on-Sea Company's Contract* [1927] 1 Ch. 579.

Covenants as to Bearing Cost of Making Up Roads—Enforcement.

Q. 1954. A small estate in the centre of this town was offered for sale in 1897, subject to certain conditions as to making and forming side and back streets, whereby the whole of the owners of the various lots should join in the cost. It is understood the whole of the conveyances of the various lots contain similar conditions. The property has now all been disposed of and the original owner is now dead. The corporation have recently made up the side and back streets and on one of the owners being applied to for payment of his proportion he has declined to do so on the ground that he is only liable for his frontage, and that the covenants being affirmative covenants, do not run with the land, and there is no privity of contract between the various owners and himself. The obvious intention of the vendor at the time of the sale in 1897 was that the cost of the formation of the streets should be divided equally between the various owners and not according to frontage. We are rather inclined to think that ss. 79-80 of the L.P.A., 1925, has the effect of making affirmative covenants run with the land, and are under the impression we have seen an opinion of Mr. Underhill in one of the newspapers to this effect, but cannot trace same. We shall be glad if you could give us your opinion as to what course should be adopted to compel the objecting owner to carry out his obligations under the conditions contained in the conveyances and pay his proper proportion.

A. It is not stated under what circumstances the roads were made up. If under the P.H.A., 1875, the corporation's apportionment must be according to frontage, s. 150 ; if under the Private Streets Works Act, 1892, it can be according to frontage, or (if the council so resolves) according to benefit, s. 10. Local Acts usually give similar power. If the original conveyances of the various plots contained covenants for contribution according to a different apportionment than these statutes provide for, it is difficult to see how the covenants can be enforced. There is no authority for the proposition that the *burden* of affirmative covenants passes to an assignee. As to the benefit passing under s. 58 of the Conveyancing Act, 1881 (now s. 78, L.P.A.), there appears to be no direct authority as to what class of covenants the section extends to. Each *original* coventor would be liable to make good his covenant to the original vendor, and possibly also (it would depend on the wording of the covenant) to *subsequent* purchasers from the original vendor ; and if there was a contemporaneous deed of covenant between all the purchasers, each with the other, an original purchaser would, of course, be liable to every other original purchaser and possibly to the latter's assigns.

Mortgagees' Rights on Disclaimer.

Q. 1955. A, in 1924, granted to B a lease of land, with a private dwelling-house thereon, for ninety-nine years, from September, 1924, at a rent of £3 per annum. The lease contained the usual proviso for re-entry on bankruptcy of the lessee or on breach of any of the covenants of the lease. A few days after the execution of the lease, B, with the consent of A, mortgaged the property to C for ninety-nine years, less three days. The mortgage provides that, on the bankruptcy of B, C can sell the property. In January of this year B filed his petition in bankruptcy, and a receiving order was made against him. Particulars of the amount owing by B to C were given to the trustee in bankruptcy by C, together with an estimate of the value of the property, but no formal proof of debt has been made. The trustee in bankruptcy, who is the official receiver (this being a summary case), has intimated that he will shortly be disclaiming the lease. So far A has taken no steps in the matter of the bankruptcy and has not suggested that he will claim a forfeiture of the lease.

(*a*) In view of the trustee's intimation that he will shortly disclaim the lease, is it necessary or advisable for C to take any steps to obtain a vesting order or otherwise to protect his position ?

(*b*) Can A ask the court for a forfeiture of the lease, and, if so, within what time must he proceed ?

(*c*) Can A ask the court for an order excluding C from all interest in the property unless C elects to accept a vesting order ? If so, within what time must A apply ?

(*d*) Assuming the trustee disclaims and A takes no steps whatever in the matter, am I right in thinking that C will without any vesting order have vested in him the term of ninety-nine years, less three days, which he can dispose of under his power of sale contained in the mortgage, notwithstanding the bankruptcy and the disclaimer by the trustee ? Or is C in the position of being able to sell the whole term ?

(*e*) Would a notice to the trustee to redeem the security under r. 13 of Sched. II of the Bankruptcy Act, 1914, be of any advantage to C ?

A. (*a*) It is necessary and advisable for C to obtain a vesting order, for the reason given in (*c*) below.

(*b*) A can ask the court for a forfeiture of the lease, but cannot so do until the expiration of one year, and if the lease is sold in the meantime, A cannot then claim a forfeiture. See the L.P.A., 1925, s. 146 (10), and *Civil Service Co-operative Society* v. *McGrigor's Trustee* [1923] 2 Ch. at p. 355.

(*c*) A can ask for an order excluding C from all interest in the property (unless C accepts a vesting order) and there is no time limit for A's application. The court has a wide discretion, however, and could impose terms in the event of unreasonable delay. See *Re Carter and Ellis* [1905] 1 K.B. at p. 745.

(*d*) The answer to the first part of this question is "Yes," but A could call upon the purchaser to take a vesting order or be excluded from all interest in the property. The answer to the second part of the question is "No," and C must obtain a vesting order before becoming entitled to sell the whole term.

(*e*) A notice to redeem would be of no advantage to C, as the trustee might require the property to be sold under r. 13 (*b*).

Ejectment by Mortgagee.

Q. 1956. In August, 1929, H mortgaged "Blackacre," by way of legal charge to A.R., to secure repayment of £675 to be repaid by monthly instalments of principal and interest. It was provided by the legal charge that in the case of H making default in payment of any one or more of the monthly instalments that the whole of the moneys payable under the charge should be forthwith due and owing, and it should be legal for A.R., without previous notice or concurrence on the part of the borrower (*inter alia*) (1) To appoint a receiver under the statutory power ; (2) to move and eject from "Blackacre" H and his tenants and workmen and all other persons then in possession or occupation thereof. H defaulted in the payments and in October, 1929, he was adjudicated bankrupt. The trustee in bankruptcy has since let "Blackacre" to R on a weekly tenancy, and has recently served R with a notice to quit, which has not been complied with. In March, 1930, A.R. appointed a receiver and several requests have been made to R to give up possession but without result. I am concerned for A.R., the mortgagee, and shall be glad to hear from you on the following points :—

(1) Can A.R. eject R and his family from "Blackacre" without taking proceedings and provided that no actual force on his person is used ; or

(2) Can A.R. instruct the local water, gas and electric companies to cut off supplies ?

(3) If A.R. can do neither (1) or (2), can proceedings be instituted in the High Court with a view to possession being obtained as soon as possible ?

A. (1) A.R. can eject R and his family in the manner suggested. See *Hemmings* v. *Stoke Poges Golf Club Limited* [1920] 1 K.B. 720. R's rights to the property (even if originally good against A.R.) have ceased since the notice to quit, and he cannot resist peaceable re-entry or legal proceedings by H, or the trustees in bankruptcy, or anyone claiming by title paramount, such as A.R.

(2) The companies in question probably do not recognise A.R. as their consumer, or as having any interest in the property, and therefore will not take instructions from him. The likelihood of non-payment, however, may induce them to cut off supplies, unless they are safeguarded either by penny-in-the-slot meters or other guarantees.

(3) Legal proceedings are an alternative to the above, but may be taken in the county court if the property is within the limit of value.

Validity of Distress after Bankruptcy.

Q. 1957. By a lease, dated 9th December, 1929, of a shop and premises let for a term of five years at a rent of £110 per annum, and proportionately for any fraction of a year, it was declared that the rent should be paid by equal quarterly payments to be made *in advance* on the usual quarter days, each quarter's rent to be due, payable and recoverable in advance on the first day of each quarter, without any deduction except for landlord's property tax. On the 29th May, 1930, the lessee was adjudicated bankrupt. On the 31st May, 1930, the landlord distrained for £19 17s. 9d., being the amount of rent from the 26th March to the 31st May due to him in advance on the 26th March, 1930. The official receiver, who is now in possession, contends that, having regard to s. 35 (1) of the Bankruptcy Act, 1914, this distress is illegal, and quotes the case of *Re Bew, ex parte Bull* (1887). The official receiver has not yet disclaimed. The landlord contends that this distress is in order, and refers to the express wording of s. 35 of the above Act and to the case *Re Howell, ex parte Mandleburg & Co.* [1895]. Will you kindly state whether the distress is in order. It is assumed that if the landlord's contention is correct and if the official receiver remains in possession, further distraint can be made prior to the 24th June for the rent accruing during such possession, provided that the official receiver has not disclaimed. Kindly say.

A. The opinion is given that, on the express wording of s. 35, the distress is in order. There has apparently been no custom to defer payment, and the case is therefore not governed by *In re Bew, ex parte Bull* (1887), 18 Q.B.D. 642. The last paragraph of the question correctly states the position.

Public Health—Enquiry as to Alternative Sewage Schemes.

Q. 1958. A local authority have submitted to the Ministry of Health a drainage scheme for the town A. In view of opposition to certain parts of the scheme, principally to the location of a pumping and separating station, it is proposed by the local authority to submit to the Ministry an alternative site for this station. Can the local authority submit a scheme for the Ministry's approval which involves an enquiry being held by a Ministry of Health inspector as to the merits of the two sites ? In our opinion the local authority must submit a complete scheme and that, so long as there are alternative schemes for the location of the pumping station, there is no scheme at all before the Ministry of Health to enquire into. In our opinion the local authority must make up their minds which site they require for the pumping station and put that forward before the Ministry as their definite scheme, and that at the local enquiry the inspector can only enquire into the definite scheme and not into the merits of alternative sites. We shall be glad for your views and authority.

A. The question does not state the grounds for holding the enquiry. If the proposal is to construct works outside the district the local authority must give the notices required by s. 32 of the P.H.A., 1875, and in case of objection under s. 33, an enquiry must be held. If the scheme is altered fresh notices should be given under s. 32, which may or may not involve a fresh enquiry, according as there are or are not objections. As to works within the district, there is no compulsion to hold an enquiry at all. The Ministry acts under the general powers in s. 293 and can allow the enquiry to embrace an alternative scheme for the sake of saving expense.

Equity of Redemption—Writs of Fi Fa and Elegit.

Q. 1959. Can a leasehold interest be sold under a Fi Fa where there is a mortgage ? Formerly an equitable interest in a term of years could not be taken by the sheriff, but since the L.P.A., 1925, one day remains in the mortgagor and not a mere equity. Proceedings by writ of Elegit and delivery in execution by a jury, followed by an application for sale under the Judgments Act, 1864, s. 4, seem to be the alternative, but it is costly.

A. It appears to us that this is a case for equitable execution. An equity of redemption was formally not extendible by any other method (*Smith* v. *Cowell*, 6 Q.B.D. 75), and though the nature of an equity of redemption is, since 1925, technically altered (being now the legal term subject to the mortgage term), we express the opinion, though not without difficulty, that the modern equity of redemption cannot be taken under a Fi Fa or Elegit.

Mortgage of Life Policy—Statute of Limitations.

Q. 1960. A mortgaged a life policy to B. No interest on the loan has been paid for twenty-five years. A now contends that B's claim, both to principal and mortgage interest upon the loan, is statute barred. B relies on the case *London & Midland Bank* v. *Mitchell* [1899] 2 Ch. 161. Your opinion is asked as to whether, upon the interpretation of this case, B's claim to interest on the mortgage is statute barred, for it appears certain that being a mortgage of "personalty," the Statute of Limitations do not affect B's claim upon the principal.

A. The remedy on the covenant is gone, but, as against the policy itself, there is no Statute of Limitation applicable, and the full amount of principal and interest can be claimed. (See *Re Jauncey, Bird* v. *Arnold* [1926] Ch. 471).

Damages Against Deceased Motorist.

Q. 1961. A, whilst riding a motor-cycle, injures B. A is killed as the result of the collision with B, and at the inquest the jury find that A was negligent, but B was in no way to blame for the accident. The insurance company with whom A was insured, deny liability on the ground that "*actio personalis moritur cum persona.*" If the deceased's estate benefits by moneys received from the insurance company, by reason of his death, are such moneys available for damages in an action by B, inasmuch as A's estate has benefited to this extent by reason of his death which resulted from his negligence ?

A. The plea of the insurance company is a good defence to the claim, and the argument advanced in the last paragraph of the question will not avail in the above circumstances. It is inaccurate to say that A's estate has benefited by the insurance money, as, in fact, this will be a very inadequate recompense for the loss suffered by A's estate owing to the cessation of his capacity to earn. Moreover, the benefit to A's estate would need to have been derived from a source originally owned by B, in order to enable B to recover. See *Phillips* v. *Homfray* [1892] 1 Ch. 465, where an action of trespass for mining coal was allowed to continue as an equitable action, after the defendant's death, for recovery of benefits accrued to his estate. The question is: Is there anything among the assets of the deceased which, at law, or in equity, belonged to the plaintiff ? See *In re Duncan* [1899] 1 Ch. 387. The policy moneys were not in that category, and therefore B cannot recover.

Commission of Commercial Traveller.

Q. 1962. A commercial traveller was engaged by a firm of costume manufacturers as an agent, on a commission of 5 per cent. on all orders obtained by him. He represented them for some six months, and then ceased to do so, and a payment was made to him by the company in respect of commissions on all orders obtained by him up till that date. Whilst representing the company, the traveller opened up for the company some fifteen entirely new accounts with houses who, before the date when he commenced to represent the company, had never done business with the company, and, in fact, had only done business with the traveller himself. The traveller now claims that those new accounts are what he terms "his own property," and that he is entitled to commission on all business done by the company with any of such firms in the future, even though he personally takes no active part in the further business, nor is employed by the company. Is the agent so entitled to this commission ? It may be added that nothing whatever was said with regard to this particular kind of commission, either when the agent was engaged or when he left the company's service.

A. The rule was stated by Mr. Justice McCardie in *Marshall* v. *Glanvill* [1917] 2 K.B., at p. 92, as follows: *Primâ facie* the liability to pay commission in cases of this kind ceases as to future trade with the cessation of the employment, in the absence of a reasonably clear intention to the contrary. In *Levy* v. *Goldhill* [1917] 2 Ch. 297, the intention to the contrary was shown by the words: "Same applies to repeats on any accounts introduced by you." The opinion is therefore given, that on the facts stated the traveller is not entitled to commission. These are necessarily border-line cases, however, and additional facts may be found to be relevant, on reference to the judgments in the above cases, in which the various conflicting decisions are discussed.

Reviews.

Industrial Arbitration in Great Britain. By Lord Amulree, K.C., formerly President of the Industrial Court. Oxford University Press. London: Humphrey Milford. 12s. 6d. net.

This is not a law book, but it is one which lawyers may read with interest and profit, telling as it does the story of the efforts that have been made from the date of the Statute of Labourers, down to the institution of the Industrial Court, to solve the ever-recurring problems that emerge in the relations of capital and labour, and the attempts, many of them crude enough, to regulate wages. On these topics the learned author, whom many will recall as a practising member of the Bar who specialised in the sphere of local government, can speak with that authority which results from the fact that he was the first President of the Industrial Court, a tribunal which, since its institution, has done valuable work in the settlement of trade disputes. Lord Amulree's survey of the subject is admirably lucid and is compressed within a brief compass. Naturally, he takes pride in the tribunal over which he presided for several years, years during which many intricate questions came up for decision; but, as he truly says, although it is important that well-devised facilities for the consideration and disposal of industrial problems should be provided and kept readily available, the extent to which these facilities will be used effectively depends upon the strength and genuineness of the will to peace possessed by the parties immediately concerned. Happily, the work of the court, ranging as it has done from claims for the adjustment of salaries and wages covering large bodies of people, to questions of detail affecting only a handful of men, has proceeded with remarkable smoothness, and the volumes in which its decisions are embodied, setting out the facts of each case and the principles enunciated, offer striking testimony to the foresight of those who brought it into existence and to the judicial insight of those who have been responsible for its working.

The Law of Master and Servant. By Francis Raleigh Batt, LL.M., Barrister-at-Law, Professor of Commercial Law in the University of Liverpool. London: Sir Isaac Pitman and Sons, Ltd. 10s. 6d. net.

This is a well-planned and well-executed work for which there was room, notwithstanding the existence of other volumes treating of the law of master and servant. In various instances the learned author has not hesitated to express his personal opinion on points not covered by authority, and those who make use of his work will be grateful to him for so doing, as he has obviously the whole subject at his fingers' ends. He regards, for example, the observations of McCardie, J., in *Moriarty* v. *Regent's Garage Co.* [1921] 1 K.B. 423, about

the apportionability of wages under the Apportionment Act, 1870, as obviously conformable to justice and common sense. We share this view, but, as Mr. Batt says, whether the observations in question, which in the particular case were *obiter*, will receive the authority of law in the face of the earlier decisions is a matter of speculation. On the very troublesome questions that arise on the subject of restrictions on freedom of contract and the covenants by which these are sought to be enforced, Chapter V will be found both clear and helpful. Again, the chapter dealing with the termination of the contract of employment by the dismissal of a servant for misconduct, for incompetency, and for illness, states the law applicable with great lucidity. We heartily commend this treatise as an excellent piece of work.

Ringwood's Principles of Bankruptcy. Sixteenth Edition, 1930, by ALMA ROPER, of the Middle Temple, Barrister-at-Law. London: Sweet & Maxwell, Ltd. £1 2s. 6d.

In this one volume is contained for the student and the practitioner the essentials of the whole law of personal insolvency. The separate chapters dealing with deeds of arrangement and bills of sale provide the student with valuable commentaries on those two rather elusive creatures of the law. The subjects of deceased insolvent debtors and private international law as affecting bankruptcy also receive separate treatment.

A feature that will appeal especially to practitioners is the inclusion in appendices of the text of the Bankruptcy Act, 1914, as amended by the Act of 1926, and by s. 9 (1) of the Moneylenders Act, 1927, and of the Bankruptcy Rules, 1915–1928. The effect of the Moneylenders Act, 1927, and the provisions of the Companies Act, 1926, with regard to undischarged bankrupts, together with leading cases decided since the last edition, have been noted in the text.

Bankruptcy and Deeds of Arrangement. By G. CAMERON OILLASON, A.C.A. Gee & Co. Ltd.

This text-book is designed to meet the needs of students reading for the final examinations of the Societies of Accountants. This being so, the author's treatment of the law of bankruptcy and of deeds of arrangement has been dictated primarily by his object of setting out the procedure to be followed in all matters likely to arise in an actual trusteeship. However, the whole subject is well covered, though in brief, with the necessary references. Added to which the index is good, and many practitioners may find the book useful as a handy lexicon of the bankruptcy law for quick reference.

Gore-Browne's Handbook on Joint Stock Companies. Thirty-seventh Edition. By His Honour Judge HAYDON and H. W. JORDAN. London: Jordan & Sons, Ltd. £1 1s.

Gore-Browne has certainly now reached the stage when it belies its name of "handbook," for the present edition extends to well over 900 pages. Let it not be thought, however, that this is said in any carping spirit, for those who have any knowledge of the extent of the law which governs joint stock companies must be aware of the impossibility of bringing within the compass of a small work a comprehensive survey of such law. And this book is certainly a generous and comprehensive survey of the law, and especially valuable is the manner in which the practical side of it is dealt with; this is a feature which has been prominent in the past, and is just as prominent in the present very excellent edition.

What strikes the reader is the skilful way in which the law, depending as it does for its origin very largely on statutes, is stated in the text without too frequent quotation from the statutes; this method has the great advantage of producing a book infinitely more readable than one overburdened with quotation, as one gets a consistent whole, and not a patchwork effect. The style of the work, too, has a certain quality which renders it easier of digestion than some law books, partly due, perhaps, to the fact that the authors are not afraid to make up their minds. At the same time it is opportune to pay a tribute to the very clear printing and satisfactory get up of the book, which for the very modest sum of one guinea may be added to the lawyer's library.

Especially useful to the busy practitioner are the appendix which contains the requirements of the London Stock Exchange with regard to official quotation and the appendix dealing with stamp duties and fees; we are also given a print of Table A, with helpful notes to the various articles, while there is a very thorough index, which so far has been able to meet all the demands put upon it by the present writer. It is a pleasure to be able to welcome a new edition of an old friend, which so worthily upholds, and indeed one may say advances, the standard of past years.

Legal Parables.

LVI.

The Helpful Justice, the Parson, the Parson's Wife, and the Wily Clerk.

THERE was once a most helpful justice of the peace, and his finger was in many a pie.

An ancient, who was a clerk in holy orders, had married a young baggage, and as she moreover drank in excess of strong waters, she was often moved to brawl in his church, which scandalously interrupted his sermons.

The height of her offending was the discarding of her garments in view of the congregation and crying loudly on her lord, whom she held up to scorn as "that villain in the pulpit."

Thereupon the ancient took counsel with the helpful justice, who, being of opinion that his word of authority could move mountains, undertook to interview the parson and the parson's wife together in the court house, yet privily.

The wily clerk, who was secretly rejoicing at the size of the mouthful the helpful justice had bitten off, was in a room adjacent, and was presently moved to inward mirth by a pitiful appeal from the justice, who found that, not only had he failed in his intervention, but could by no means rid himself of the presence of the bold and bad woman who was at that time much fortified by liquor she had taken in readiness for the occasion.

The wily clerk, who should have been a distinguished general, and organised strategic retreats accompanied by tactical successes, invited the parson to remove to another part of the building. He then engaged the wife in talk in such manner that she grew heated and demanded her spouse with violent language.

"He has gone home," mendaciously averred the clerk, and showed the lady to the door, through which she hastened, and ceased not running until she had turned the corner of the street.

The husband was then quickly despatched in the opposite direction.

The justice, much humbled in his opinion of himself, resolved henceforth to act only in his office, and to let all things otherwise proceed unhindered to their appointed end.

The first moral was known to one Jack Horner, who, in the interests of his own reputation, never published that he had badly burned his thumb.

The second moral was put forth by no lesser a man than the great Lord Chancellor Bacon: "An ancient clerk, wary in proceeding, is an excellent finger of a court *and doth many times point the way.*"

Mr. Alfred John Slocombe, of Fixby House, Huddersfield, late clerk to the Huddersfield Borough Magistrates, left estate of the gross value of £12,089, with net personalty £10,973.

Legal Fictions.

III.

Doli Incapax.

Be it Known to all men that, by Law, the Child under Seven, like the King, can do no Wrong, though we have to the contrary not only the evidence of our own senses, which is perhaps not much, but the Conclusive Testimony of an Early Father of the Church that many Quite Small Children do, for their Sins, crawl and squirm on the Floor of Hell.

From seven to fourteen, the Infant is Presumed by the Law to be in the like State of Innocence with his Baby Brother, unless Strong Evidence show his Mischievous Disposition.

Yet a Merciful Providence has decreed that there shall always be a Way Round.

The Rebuttable Presumption is largely ignored, and the Malice taken for granted.

As to the Irrebuttable Presumption a Learned Stipendiary has taken the First Bite out of the Cherry by confidently declaring that the Doctrine of the Incapacity of the Child under Seven to commit crime relates only to Felony, and who knows that this Startling View will not in the end Prevail or even be improved upon?

For still another intendment of the Law, that a Boy under Fourteen cannot beget a Child, there is no Present Remedy, though his Offspring Coo Contradiction in the Very Face of the Court.

There is High Judicial Authority that "there are many crimes of the most heinous nature, such as the murder of young children, poisoning parents or masters, burning houses, etc., which children are very capable of committing." There is High Artistic Authority that many of our Houses Ought to be Burned. There is High Philosophic Authority that nearly all Parents and most Schoolmasters are Utterly Preposterous Persons.

What, in these circumstances, is a Really Good Child to do? Burn and Poison surely, and by proof of Benevolent Motives displace the evidence of Malice, however strong. With the aid of Psycho-Analysis this should not be difficult.

It is not a Presumption of Law but a Fact Verified by Scientific Experts (who are always Right) that the Child is Father to the Man. As an *addendum* to that aphorism, let it be said that most Men live throughout their lives as Thick as Thieves with the Children who are their Parents.

In Lighter Vein.

The Week's Anniversary.

On the 15th July, 1372, Sir John Cavendish was appointed Chief Justice of the King's Bench, being promoted from the Common Pleas.

He appears to have possessed "a pretty wit" if one may judge from a remark of his reported in the year books.

In a case before him a lady's age was material, and her counsel suggested that she should come into court to prove it. But the judge, with some shrewdness and knowledge of women said:—

> "Il n'ad nul home en Engleterre que puy adjudge a droit deins age on plein age car ascun femes que soit de age de XXX ans voilent apperer d'age de XXVII ans."

It is sad to recall that this amiable judge was murdered in the Eastern Counties during Jack Straw's rising. They plundered his house and dragged him to the market place of Bury St. Edmunds, where after a mock trial they cut off his head and insulted his remains.

The Early Judge.

The Southend County Court was recently edified to learn that Judge Crawford walks three miles before breakfast.

Judges as a rule are no sluggards. For example, Hawkins, J., on assize was as notable for rising early in the morning as for sitting late at night in Court.

On his early walks his terrier "Jack" went with him—sometimes ratting. Once at Warwick a too enthusiastic chase brought them into the flower garden of an old philosopher, beer shop keeper and local Hampden.

"Where the hell are you coming to like this?" he cried. Nor was he pacified by the high office of the trespasser. "I didn't know," he said, "it wur the judge doin' me the honour to tear my flower beds to pieces; but Orkins or no Orkins, he ain't gwine to play hell with my flower beds like that 'ere."

The judge, however, returned a mild answer and made amends with a sovereign. But mark from what strange seed esteem may grow. Every morning during the rest of that assize and during every assize that Sir Henry held at Warwick thereafter there was a gift of flowers at his lodging from the old man.

Truth in the Box.

The fact recently touched upon by Horridge, J., that highly respectable witnesses sometimes lie is perhaps more familiar to lawyers than to jurors.

Of all the caustic remarks on the reliability of witnesses, I like best one of the judgments of Maule, J.

"Gentlemen of the jury, if you believe the witnesses for the plaintiff, you will find for the defendant. If you believe the witnesses for the defendant, you will find for the plaintiff. If, like myself, you don't believe any of them, Heaven knows which way you will find. Consider your verdict."

Perhaps the mental attitude of the average witness is best illustrated in the engagingly sophisticated answer of a little girl in an Irish court who was being examined on her knowledge of the nature of an oath.

"What will happen to you if you tell a lie in your evidence?" she was asked.

"I suppose, sir," she replied, "I wouldn't get my expinses."

Notes of Cases.

Court of Appeal.

Wilkins *v.* The Carlton Shoe Company Limited.

Scrutton, Greer and Slesser, L.JJ. 14th May.

Landlord and Tenant—Restrictions—Dwelling-house—Possession—Statutory Tenant—Declaration of Trust—Determination of Statutory Tenancy.

Appeal from a judgment of Lord Hewart, C.J., in an action tried at Bristol Assizes (74 Sol. J. 285).

The plaintiff claimed to recover possession of a dwelling-house and shop at 26, Castle Street, Bristol. Following on the determination of a prior tenancy agreement, Charles Lewis, trading as The Carlton Shoe Company Limited, held the premises in question from the 25th of March, 1922, as a statutory tenant under the Rent Restrictions Acts from the Bristol Corporation. By an agreement, dated the 27th April, 1922, made between the Bristol Corporation and the plaintiff Wilkins, the corporation agreed to let the premises to the plaintiff for a term of 75 years from the 25th March, 1922, at a certain rent on certain conditions. On the 13th March, 1928, the defendant company, The Carlton Shoe Company Limited, was registered and acquired the business and assets, including the benefit of the tenancy of the premises at Castle Street, Bristol, of The Carlton Shoe Company, carried on by Lewis. The tenancy of the premises was sold to the defendant company by Lewis, subject to the rents and covenants contained in the agreement of tenancy under which Lewis held it, and it was provided that possession should be given to the company as far as possible, and that Lewis should endeavour

to obtain all necessary consents to the assignment or transfer of the premises. Lewis did not apply to the plaintiff for his consent to an assignment, but, by a declaration of trust, dated 7th May, 1928, he declared that he held the premises at 26, Castle Street, the tenancy whereof was vested in him as a statutory tenant, in trust for the defendant company. On the execution of that trust the company was placed in possession of the premises, and had since carried on business there. This action was brought by the plaintiff to recover possession of the premises.

Lord HEWART, C.J., held that, according to the principles laid down in *Keeves* v. *Dean*, 68 SOL. J. 321; [1924] 1 K.B. 685, the effect of placing the company in possession of the premises in pursuance of the contract of sale was to determine Lewis's statutory tenancy and no right to possession as against the plaintiff passed to the defendant company. Judgment was therefore entered for the plaintiff.

The defendants appealed.

The Court dismissed the appeal. Mr. Lewis, in whom the premises were vested as a statutory tenant, had no power to sub-let the premises and therefore the transaction entered into between Lewis and the defendant company in March, 1928, whereby Lewis assigned his business and assets at 26, Castle Street to the defendant company, gave the defendant company no title to the premises. They were therefore trespassers, and the plaintiff was entitled to possession. Appeal dismissed.

COUNSEL: *F. W. Beney* and *L. R. Dunne*; *E. H. C. Wethered* and *Malcolm McGongan*.

SOLICITORS: *Peachey & Co.*; *Hatchett-Jones & Co.*, for *Bolton & Davidson*, Bristol.

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

In re **Drabble Brothers.**

Lord Hanworth, M.R.; Lawrence and Romer, L.JJ. 16th May.

BANKRUPTCY — FRAUDULENT PREFERENCE — INTENT OF DEBTOR'S AGENT TO PREFER CREDITOR—WHETHER PREFERENCE ATTRIBUTABLE TO DEBTOR—AGENCY—BANKRUPTCY ACT, 1914 (4 & 5 Geo. 5, c. 49), s. 44.

Appeal from a decision of the Divisional Court, Clauson and Farwell, JJ.

G. and F. Drabble carried on business as builders, the latter being the working partner. They had an employee called Tiley, and F. Drabble allowed Tiley to act for the firm in all financial matters, and made such payments as Tiley requested. Tiley was not actually authorised to sign cheques, but he decided from time to time what sums should be paid, and put the cheques before F. Drabble for the latter's signature. Knowing that the firm was hopelessly insolvent, Tiley arranged for certain payments to be made to Swan & Co. Upon Drabble Brothers becoming bankrupt, the trustee moved for a declaration that the payments were fraudulent preferences within the Bankruptcy Act, 1914, s. 44. The judge at Chesterfield County Court made the declaration, but the Divisional Court reversed his decision, on the ground that the knowledge of Tiley was not the knowledge of F. Drabble. The latter had no intent to prefer creditors, and Tiley's knowledge could not be imputed to his principal. The trustee appealed; the Court allowed it.

Lord HANWORTH, M.R., said that there was no doubt that F. Drabble had put Tiley in the way of ordering all payments. In *Blackburn* v. *Vigors*, 12 App. Cas., at p. 537, Lord Halsbury said: "Some agents so far represent the principal that in all respects their acts and intentions and their knowledge may truly be said to be the acts and intentions and knowledge of the principal." In the present case F. Drabble had delegated all matters of finance to Tiley, to such an extent as to make the act and the intention and the knowledge of Tiley his own.

LAWRENCE and ROMER, L.JJ., gave judgments to like effect.

COUNSEL: *Sir Gerald Hurst*, K.C., and *Walmsley*, for the appellant; *Cave*, K.C., and *Allsebrook*, for the respondents.

SOLICITORS: *Peacock & Goddard*, for *R. W. Beswick*, Chesterfield; *Geare & Son*, for *Cooke & Co.*, Nottingham.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

In re **Withers & Co.**

Scrutton, Greer and Slesser, L.JJ. 20th May.

PRACTICE—APPEAL FROM JUDGE IN CHAMBERS—WHETHER TO COURT OF APPEAL OR DIVISIONAL COURT—NO ACTION PENDING—MATTER OF PRACTICE AND PROCEDURE—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 31, sub-s. (3)—R.S.C., Ord. LIV, r. 23.

Appeal from judge in chambers.

On 18th March, 1930, an originating summons was taken out by the appellant, Hayley Morris, asking for an order that the respondents, Messrs. Withers & Co., may be ordered to deliver a bill of costs to the applicant or his solicitors, in all causes and matters from 1st October, 1925, to 31st March, 1926, and to give credit therein for all money received by them from or on account of the applicant. The summons was heard by Master Baker, who ordered that the respondents, Messrs. Withers & Co., solicitors, do deliver to the applicant or his solicitors a full bill of costs in respect of two amounts incurred (1) between 15th October, 1925, and 11th November, 1925, and (2) between 11th November, 1925, and 21st December, 1925, and to give credit therein for all sums received by them from or on account of the applicant. On appeal, Talbot, J., in chambers, reversed that order, but gave leave to appeal. Messrs. Withers & Co. had acted for the applicant in certain criminal proceedings at police court and at assizes. They had opposed the order on the ground that they had delivered their bill of costs in summary form to the applicant's attorney in 1925 and 1926, and the applicant's attorney had then waived his right to the delivery of itemised bills and had paid the amounts. The applicant appealed. A preliminary objection was taken that the appeal, not being an appeal in a matter of practice and procedure, did not lie to the Court of Appeal, but to the Divisional Court.

The court upheld the preliminary objection. The application was neither practice nor procedure, but related to a matter of substantive right under the Solicitors Act, 1843, a client having a substantive right to a bill of costs in certain cases. The appeal, therefore, did not lie to the Court of Appeal but to the Divisional Court. Preliminary objection upheld.

COUNSEL: *Roger S. Bacon*, for the appellant; *J. W. Morris*, for the respondents.

SOLICITORS: *Percy Bono & Griffith*, for the appellant; *Withers & Co.*, for the respondents.

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Holmes *v.* **Payne.** Roche, J. 12th May.

INSURANCE—LOST JEWELLERY—REPLACEMENT AGREEMENT—SUBSEQUENT FINDING OF JEWELLERY—AGREEMENT BINDING—MEANING OF "LOST."

The plaintiff in this action, Harry Holmes, a Lloyd's underwriter, insured a pearl necklace, valued at £600, and other articles of jewellery belonging to the defendant, Mrs. Walter Payne, by a policy dated the 7th November, 1928. On the 21st November, 1928, the defendant reported to the plaintiff's agents that she had lost the pearl necklace. The plaintiff, in December, 1928, agreed with the defendant that instead of paying her the £600 in cash to cover the loss he could provide her with certain articles of jewellery of equivalent value. She obtained under that agreement articles, which were still in her possession, to the value of

£188 2s. On the 27th February, 1929, the defendant discovered the pearl necklace caught in the sleeve lining of an evening cloak. She informed the plaintiff who now claimed: (1) A declaration that the necklace had not been lost; (2) the rescission of the agreement which he entered into on the supposition that it had been lost; and (3) the return of the articles of jewellery which he had supplied in replacement. The defendant was willing to hand over the necklace as salvage, but she refused to return the articles on the ground that there had in fact been a loss of the pearl necklace within the meaning of the policy. She counter-claimed for £411 18s., the difference between the £600 and the value of the articles so far received in replacement.

ROCHE, J., said that there was no suspicion as to the honesty and good faith of all parties in the case. On the 27th February, 1929, the missing necklace was found, and the question now for decision was whether the underwriters were entitled to re-open the settlement under which they agreed to replace. He held that it was a binding agreement outside the policy and made for the advantage of the underwriters. There was no suggestion of dishonesty. As to the facts, he was satisfied that the defendant was anxious to find the necklace and made such a search as occurred to her, and that in doing so did not fall below the standard of a reasonable diligent woman. No authority had been cited to show that the agreement could be reopened. He could not see any distinction in principle between payment and replacement; and the fact that the replacement had only been made in part was immaterial. That being so, there was a binding contract, and it was unnecessary to decide whether there had actually been a loss. If it had been necessary to decide whether a loss had taken place in this case he would have held that a loss had occurred. Judgment for the defendant, with costs.

COUNSEL: *Sir Albion Richardson*, K.C., and *Harold Murphy*, for the plaintiff; *H. D. Samuels*, for the defendant.

SOLICITORS: *Oswald Hickson, Collier and Co.; Andrew, Wood, Purves and Sutton.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Hudd *v.* **Matthews.** Talbot and Finlay, JJ. 13th May.

LANDLORD AND TENANT—EXPIRATION OF LEASE—COMPENSATION FOR GOODWILL—BASIS OF COMPUTATION—VALUE ACCRUING TO LANDLORD—LANDLORD AND TENANT ACT, 1927 (17 & 18 Geo. 5, c. 36), ss. 4 (1) (2), 5 (1).

Appeal from Bloomsbury County Court.

In this case the plaintiff, in 1925, had purchased for £700 from the previous tenant the goodwill of the business of an eating house and the lease of the premises at 154, High-street, Camden Town. In 1927 he exercised an option to renew the lease for three years at a rent of £200 a year. He served notice on the landlord in June, 1929, claiming, at the expiration of his lease in 1930, to be entitled under s. 4 of the Landlord and Tenant Act, 1927, to compensation for goodwill, or a new lease under s. 5 of the Act. In the county court he subsequently claimed £2,000 as compensation for loss of goodwill, or, in lieu, the grant of a new lease. The matter was remitted from the county court to a referee who, although finding that goodwill did attach, was not satisfied that by reason thereof the premises could be let at a higher rent than if no such goodwill attached, and he reported that the plaintiff was not entitled to any compensation and that, since he (the plaintiff) had failed to prove that he was so entitled, the grant of a new lease would not be reasonable. Being of opinion that in order to give effect to s. 4 (1), proviso (*a*), and to s. 4 (2) of the Act of 1927, it was necessary to read s. 4 (1) as meaning that the tenant was entitled to compensation for goodwill if he proved that by the carrying on of the business as an eating house for not less than five years goodwill became attached, the county court judge again sent back the case to the referee for consideration on that point. The defendant landlord now appealed on the ground that that construction was wrong in law.

TALBOT, J., said that the question was whether the premises could be let at a higher rent for the purpose of the business for which they had been previously used. It was irrelevant to inquire into the purpose of the letting if the rent were increased by the goodwill; if, however, the premises could command a higher rent for other purposes than those for which they were previously used, goodwill and all, then apparently the landlord gained no benefit which could be regarded as goodwill created by the tenant by the change of tenancy. Proviso (*a*) of s. 4 (1) was a clear indication that the Legislature had in mind as the basis of compensation the value of goodwill accruing to the landlord and not the loss suffered by the tenant. The appeal would be allowed.

FINLAY, J., concurred.

COUNSEL: *G. O. Slade* and *E. R. Guest*, for the appellant; *Glyn-Jones*, for the respondent.

SOLICITORS: *Stanley Evans & Co.; Gard, Lyell & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Commissioners of Inland Revenue *v.* **Trustees of the Hostel of St. Luke, Registered.**

Rowlatt, J. 13th May.

REVENUE—INCOME TAX—CHARITABLE SUBSCRIPTION—DEDUCTION OF TAX.

Case stated by the Special Commissioners of Income Tax.

By a deed of covenant made on the 3rd February, 1927, between Herbert Kempson Reeves (the subscriber) and the present respondents, the trustees of the Hostel of St. Luke, the subscriber covenanted with the hostel that he would during the term of seven years from the 6th April, 1928, pay to the funds of the hostel annually from his taxed income the sum of £10, less income tax. If and when the rate of income tax was altered he would pay such other sum as would, after deduction of income tax at the current rate, leave to the hostel a net sum of £8. The first annual payment was to be made on the 31st December, 1926, and subsequent annual payments on the 31st December of each year. The subscriber paid to the hostel on 4th February, 1927, £8 as the first annual payment under the deed for the year ending 5th April, 1927, and like sums on 31st December, 1927 and 1928, for the years ending on 5th April, 1928, and 5th April, 1929, respectively. The last payment would fall due on 31st December, 1932. The hostel claimed repayment of £2, being the amount deducted in respect of income tax from the sum paid to the hostel by the subscriber on 31st December, 1928. The Special Commissioners held that the sums payable to the hostel under the deed formed part of the income of the hostel, and that the payments were sums payable for a period exceeding six years, and they allowed the hostel's claim for relief. The Crown now appealed.

ROWLATT, J., said that he agreed that the hostel was entitled to relief. What the subscriber said by the deed was that he was going to make payments in respect of seven years ending six years from the next 5th of April; that was in every year of the seven he would pay £10 less income tax, and if the rate of income tax altered he would alter the gross amount of his payments to keep pace with it so that his actual payment should always be £8 for each year down to the 5th April, 1933. The date named for the payment was merely machinery to tell the hostel when they might ask for payment. It seemed to him that what was spoken of in the Act was income tax years, and that was what was meant by the deed. The appeal would be dismissed, with costs.

COUNSEL: *The Attorney-General* (*Sir William Jowitt*, K.C.), and *R. P. Hills*, for the Crown; *Jenkins*, K.C., and *H. F. Greenland*, for the Hostel.

SOLICITORS: *The Solicitor of Inland Revenue; Herbert Reeves & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Revenue Officer, Cardiff *v.* Assessment Committee of Cardiff Borough Assessment Area, and Western Mail, Ltd.

Avory, J., Talbot, Finlay, JJ. 23rd May.

RATING—DE-RATING—NEWSPAPER-PRODUCING PREMISES—INDUSTRIAL HEREDITAMENT—APPORTIONMENT—RATING AND VALUATION (APPORTIONMENT) ACT, 1928 (18 & 19 Geo. 5, c. 44).

Appeal by the revenue officer for the Borough of Cardiff Assessment Area by case stated against a decision of the Recorder of Cardiff, who held that the premises at Cardiff occupied by the *Western Mail* were an "industrial hereditament" under the Rating and Valuation (Apportionment) Act, 1928, and were entitled to be de-rated.

The Western Mail, Limited, were the occupiers of a hereditament described in the valuation list as "shop, offices, printing works and appurtenances at 69, St. Mary-street, Cardiff." It was included in the special list as an industrial hereditament at a net annual value of £1,700—apportioned at £990 for industrial purposes and £710 for non-industrial purposes. The Western Mail, Limited, occupied the whole of the premises for the purposes of printing and publishing the *Western Mail* and three other newspapers. The hereditament was registered under the Factory and Workshop Acts. The newspapers were supplied to wholesalers, who supplied retail agents. The revenue officer now appealed against the decision to include the hereditament in the special list, and the Western Mail, Limited, now appealed against the decision to apportion the assessment.

AVORY, J., said that to determine whether the hereditament was primarily occupied for purposes which were not those of a factory or workshop one had to turn to the Factory Acts. Referring to the definition of "non-textile factory" in the Factory and Workshop Act, 1901, he said that he could not bring himself to doubt that the composing, printing and publishing of such a newspaper as this came within the precise words of that definition. It was impossible to say that it was not the making or adapting for sale of an article, and that it was done by way of trade and for purposes of gain was incontrovertible. He was of opinion that the hereditament was primarily occupied for factory purposes and was rightly put in the special list. There ought to be an apportionment of those parts of the hereditament which were occupied and used for industrial purposes as distinct from those which were used for other purposes. He was unable to find any better rule or principle for determining the portions used for industrial purposes and those used for other purposes than that in the Scottish case of *George Outram and Sons, Ltd.* v. *Inland Revenue* (1930), S.L.T. 303, where the parts excepted were used for the managerial, editorial and publishing staff, and not in connexion with the manufacturing processes. The present case, therefore, should be remitted to the Recorder to determine which portions of the premises should be excluded; the items under the heading of printing, engineering, etc., were all clearly industrial. The appeal would be dismissed on the main question and allowed on the apportionment question.

TALBOT, J., and FINLAY, J., delivered judgments to the same effect.

COUNSEL: *The Attorney-General* (Sir William Jowitt, K.C.) and *Wilfrid Lewis*, for the appellant; *Comyns Carr*, K.C., and *William C. Howe*, for the *Western Mail*; *C. W. Lilley* held a watching brief for interested parties.

SOLICITORS: *The Treasury Solicitor*; *Ingledew, Sons and Brown*, for *Ingledew & Sons*, Cardiff.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Montague L. Meyer, Ltd. *v.* Travaru A/B H. Cornelius, of Gamleby.

Rowlatt, J. 26th June.

SHIPPING—CARRIAGE OF TIMBER—"UNDER DECK" STIPULATION—BREACH OF CONTRACT—TIMBER DAMAGED—REFUSAL TO ACCEPT.

Award stated in the form of a special case.

In this case, Montague Meyer, Ltd., had bought from Travaru A/B H. Cornelius, of Gamleby, a Swedish company, a quantity of timber, the terms of the contract, which was in Albion 1922 form, stipulating, *inter alia*, that the timber should be carried "under deck," and also that the buyers should not reject. The timber was shipped under a bill of lading (dated the 9th December, 1929) which did not state whether the goods were on or under deck. On arrival it was found that only 40 per cent. of the timber had been loaded under deck, and that the remainder, which had been carried on deck, had been wetted and damaged by sea water. An arbitration followed the buyers' refusal to accept the goods on the ground that they were not the goods specified in the contract. The umpire found: (1) under-deck shipment was part of the specification; and (2) the buyers were not justified in rejecting. The question for the court was whether the buyers were entitled to reject on the ground either that the words "under deck" formed part of the description of the goods, or that the term relating to under-deck shipment was a condition precedent of the contract.

ROWLATT, J., said that he was clearly of opinion that the words "under deck" were a condition of the contract. It was a material term of the contract; and he decided in favour of the buyers. He refused a stay of execution.

COUNSEL: *H. Stranger*, for the sellers; *Willink*, for the buyers.

SOLICITORS: *Trinder, Kekewich & Co.*; *William A. Crump and Son.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Eyre *v.* Eyre.

Bateson, J. 17th and 18th February.

DIVORCE—PRACTICE—DECREE ABSOLUTE—PERMANENT MAINTENANCE—INCREASE—SPECIAL PAYMENT FOR CHILDREN'S MAINTENANCE—EXPENSES OF ILLNESS—PROCEDURE—MATRIMONIAL CAUSES RULES, 1924, rr. 73 (A), (B)—JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 193.

This summons adjourned into court raised, *inter alia*, questions of jurisdiction and procedure. Mrs. Eyre, the applicant, obtained a decree absolute against the respondent in June, 1925. There were two young children of the marriage, of whom she was given the custody. The applicant obtained maintenance at the rate of £377 per annum, with an additional £400 per annum for the support of the children. In March, 1928, on a judge's summons, the respondent consented to pay the sum of £599, the amount of medical expenses incurred by the applicant in respect of illnesses of the children. On 11th March, 1929, the applicant received an increase of maintenance making the amount up to £827 per annum. In July, 1929, the applicant took out the present summons asking for an order directing the respondent to pay a sum of £969 for further expenses incurred on account of the children's illnesses. These included medical fees, hotel bills, and the cost of taking the children abroad to recuperate. The judge referred the application to the registrar for inquiry and report. The submission in the report was that the applicant should bear the expenses of such illnesses of the children as asthma, whooping cough and chicken pox, but the expenses of other more serious illnesses and of operations should not be entirely borne by her; that the applicant had resorted to expensive specialists and doctors and had incurred excessive expenses on nursing, and in the result the respondent should be ordered to pay £175 for medical expenses and £150 for nursing expenses. On the adjourned summons on the report counsel's arguments were mainly directed to the question as to whether the application was well founded.

BATESON, J., in giving judgment, said that he was satisfied that under s. 193, sub-s. (1), of the Judicature (Consolidation)

Act, 1925, he had power to entertain an application for a special payment in respect of maintenance of the children. Further, procedure under Divorce Rule 73A was correct, that was by way of judge's summons after decree at the instance of the party having the custody of the children under an order of the court, if no petition was pending. The present case did not come under r. 73B, under which a registrar might have had jurisdiction if a petition for maintenance had been pending. The sums of £175 and £150 recommended in the report would be allowed. The balance of the claim would be disallowed.

COUNSEL: *Willis*, K.C., and *T. Bucknill*, for the applicant; *H. D. Grazebrook*, for the respondent.

SOLICITORS: *Ernest Salaman, Wade & Co.; Gustavus Thompson & Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Olding *v.* **Olding.** Lord Merrivale, P. 19th May.

DIVORCE—WIFE'S MAINTENANCE—AGREEMENT FOR LUMP SUM IN FINAL SETTLEMENT—ORDER EMBODYING TERMS AS TO AMOUNT PAYABLE—NO APPLICATION FOR FURTHER MAINTENANCE TO BE MADE WITHOUT LEAVE OF A JUDGE—JUDICATURE (CONSOLIDATION) ACT, 1925, 16 & 16, Geo. 5, c. 49, s. 190.

This was a summons adjourned into court.

The wife petitioner having obtained a decree absolute of divorce, agreed with the respondent to accept in full satisfaction of all claims to permanent maintenance the sum of £150 made up of an immediate payment of £100 and a deferred payment of £50, with interest thereon at 5 per cent. per annum, the petitioner undertaking not to institute any further proceedings in respect of maintenance. The petitioner thereupon took out a summons before the Registrar with the purpose of embodying this arrangement between the parties in an order of the court. By indorsement on the summons the respondent consented to an order in the terms of the summons. The Registrar adjourned the summons to the judge, who adjourned it into court for argument. Counsel for the petitioner, referring to *Twentyman* v. *Twentyman* [1903] P. 82, said that although the court could not order a respondent to pay a lump sum, yet if the parties had agreed to settle any claim for maintenance by such a payment on an undertaking by the petitioner not to take any future proceedings for maintenance, the court had jurisdiction to make such an order by consent, such a course having been adopted in the recent case of *Jenkins* v. *Jenkins*, *ante*, p. 170.

Lord MERRIVALE, P., said that there would be an order in the terms of the summons with respect to the payments agreed. There would also be an order to the effect that the petitioner should not be at liberty to make any application in respect of maintenance without the leave of a judge.

COUNSEL: *Cecil Binney*, with him *N. P. d'Albuquerque*, for the petitioner.

SOLICITORS: *Baker, Robinson & Spink.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Chancery of Lancashire.

In the Matter of the Trusts of the Will of William Hyde, deceased. Hyde *v.* **Bryce.**

Vice-Chancellor Sir Courthope Wilson, K.C. 2nd June.

TENANT FOR LIFE—BONUS SHARES CREATED AFTER DEATH—DIVIDENDS—APPORTIONMENT ACT.

Under the will of a testator who died in 1916, ordinary and "B" ordinary shares in a limited company were held upon trust to pay the dividends to the testator's daughter, A. M. Bryce, during her life, and after her decease in trust for other persons. The tenant for life died on the 28th January, 1929. By resolution of the company passed on the 7th August, 1929, new "B" ordinary shares were created, some of which were allotted to the trustees of the testator's will in respect of their holding of the existing ordinary and "B" ordinary shares. At the annual general meeting held on the 28th November, 1929, the company passed the following resolution: "Resolved that dividends at the rate of 20 per cent. per annum, less income tax, be declared on the ordinary and 'B' ordinary shares of the company." Notice of this dividend was sent out by the secretary in the following terms: "Dear Sirs,—A dividend at the rate of 20 per centum per annum on the amount paid up on the 'B' ordinary shares of the company having been declared for the year ending 30th September, 1929, a cheque is enclosed herewith for the amount to which you are entitled."

The VICE-CHANCELLOR said that the question raised by the petition, namely, whether the estate of the tenant for life was entitled to an apportioned part of the dividend declared in respect of the shares created after her death, was new, so far as he was aware. The terms in which the dividend was declared, and the fact that the resolution was passed at the annual general meeting, led to the conclusion that it was declared in respect of the year for which such annual meeting was held. The secretary's letter supported this conclusion. *In re Jowett* [1922] 2 Ch. 442, which had been referred to, was not applicable, because in that case the court held that the dividend was not a "periodical payment" within the meaning of the Apportionment Act, 1870.

Dealing with the point that the Act could not apply because the shares were not in existence at the death of the tenant for life, the Vice-Chancellor referred to the terms of s. 2 and the definition of "dividends" in s. 5 of the Act, and said that, in his opinion, the Act was sufficiently strong to make the dividend accrue from day to day throughout the period (which, in this case, was the year ended the 30th September, 1929), although the shares were not in existence. When new shares of this kind were created it was frequently provided that they should rank for dividend from a particular day, but there was no such provision here, and in the absence of any limitation of their rights they were entitled to equal rights with the other "B" ordinary shares. He therefore held that the estate of the tenant for life was entitled to an apportioned part of the dividend in respect of the new "B" ordinary shares created by the resolution of the 7th August, 1929.

COUNSEL: *J. M. Easton; John Bennett; C. E. R. Abbott.*

SOLICITORS: *Parkinson, Slack & Needham; J. Hislop and Sons.*

[Reported by T. C. OWTRAM, Esq., Barrister-at-Law.]

Banquet to His Majesty's Judges.

The Lord Mayor of London, Sir William A. Waterlow, and the Lady Mayoress entertained His Majesty's Judges to a banquet at the Mansion House on 4th July. Among those present were the Lord High Chancellor, Lord Sankey, G.B.E., Miss Sankey, Lord Hanworth, K.B.E. (The Master of the Rolls), The Lady Hanworth, Viscount Dunedin, G.C.V.O., The Viscountess Dunedin, C.B.E., Lord Wrenbury, The Lady Wrenbury, Lord Jessel, C.B., C.M.G., The Lady Jessel, Lord Warrington of Clyffe, The Lady Warrington of Clyffe, Lord Darling, The Hon. Diana Darling, Lord Atkin, The Lady Atkin, Lord Tomlin, The Lady Tomlin, Lord Greenwood (Treasurer of Gray's Inn), The Lady Greenwood, Lord Russell of Killowen, The Lady Russell of Killowen, Lord Justice Lawrence, Lady Lawrence, Lord Macmillan, The Lady Macmillan, The Rt. Hon. Sir Lancelot Sanderson, K.C. (late Chief Justice of Calcutta), Lord Justice Scrutton, Lady Scrutton, Lord Justice Greer, Lady Greer, The Hon. Mr. Justice Eve, Lady Eve, Lord Justice Slesser, Lady Slesser, The Hon. Mr. Justice Avory, The Rt. Hon. Sir Leslie Scott, K.C., M.P., Alderman Sir George Truscott, Bt., Mrs. Henry Truscott, The Rt. Hon. F. A. Anglin (Chief Justice of Canada), Mrs. Anglin, Sir William Jowitt, K.C., M.P. (Attorney-General), Lady Jowitt, The Hon. Mr. Justice Talbot, Lady Talbot, The Rt. Hon. Sir Ellis Hume Williams, Bt., K.B.E., K.C., The

Hon. Mr. Justice Finlay, K.B.E., The Viscountess Finlay, Colonel and Alderman Sir Alfred Bower, Bt., Lady Bower, The Hon. Mr. Justice Macnaghten, K.B.E., The Hon. Lady Macnaghten, The Hon. Mr. Justice Bateson, Mrs. Hallibarton Smith, The Hon. Mr. Justice Luxmoore, Lady Luxmoore, The Hon. Mr. Justice Wright, Lady Wright, The Hon. Mr. Justice Farwell, Lady Farwell, The Hon. Mr. Justice Clauson, C.B.E., Lady Clauson, The Hon. Mr. Justice Bennett, Lady Bennett, The Hon. Sir Sydney Nettleton (Chief Justice of Gibraltar), Lady Nettleton, The Hon. Sir H. Gollan (Chief Justice of Hongkong), Chief Justice Tew (Sierra Leone), Mrs. Tew, Chief Justice Garraway (St. Lucia), Mrs. Garraway, Mr. Justice Mya Bu, Mr. Justice Corrie, Mrs. Corrie, Mr. Justice Drieberg, Mr. Justice Hodgins, Mrs. Hodgins, Mr. Justice Jackson, Mr. Justice Russell and Mrs. Russell, Mr. Justice Webb, Mr. Justice Whitley, Alderman Sir W. and Lady Baddeley, Sir G. H. and Lady Bonner, Alderman Sir W. J. M. and Lady Burton, Justice Sir B. J. Dalal and Lady Dalal, Sir Robert Dibdin, Sir H. F. Dickens, K.C., and Lady Dickens, Alderman Sir Harold Downer, LL.B., Lady Downer, Sir C. S. Findlay, Sir Banister Fletcher, P.R.I.B.A., Sir F. D. and Lady Green, Sir Roger Gregory, Sir Patrick Hastings, K.C., and Lady Hastings, Justice Sir B. H. and Lady Heald, Sir Thomas Hughes, K.C., and Lady Hughes, Sir Thomas Inskip, K.C., The Lady Augusta Inskip, Alderman Sir Stephen Killick, Sir Amberson and Lady Marten, Sir Charles Neisch, K.B.E., C.B., Sir Francis Newbolt, K.C., and Lady Newbolt, Captain Sir William Nott-Bower, K.C.V.O., Sir Reginald and Lady Poole, Justice Sir H. S. and Lady Pratt, Sir John Risley, K.C.M.G., K.C., C.B., Lady Risley, Colonel Sir Stuart Sankey, K.B.E., G.C.V.O., Lady Sankey, Sir William Soulsby, K.C.V.O., K.C., C.I.E., Sir Guy Stephenson, C.B., and Lady Stephenson, Alderman Sir Kynaston Studd, Bt., LL.D., Lady Studd, Sir W. F. Kyffin Taylor, G.C.B., K.C., and Lady Taylor, Sir William Thomas, M.B.E., Judge Sir Alfred Tobin, K.C., Lieut.-Col. Sir Hugh Turnbull, K.B.E., J.P., Lady Turnbull, Alderman Sir Percy Vincent and Lady Vincent, Sir Robert and Lady Welsford, Sir Ernest Wild, K.C., Lady Wild, Sir John Withers, M.P., LL.D., and Lady Withers, Major and Sheriff Bowater, Mrs. Bowater, Mr. Alderman and Sheriff Neal, Mr. Under-Sheriff Deighton, Mrs. Deighton, Mr. Deputy Bennet, Mr. Deputy Brough and Mrs. Brough, Mr. Deputy Ellis, Mrs. Ellis, Mr. Deputy Jennings, Mr. Deputy Smyth, Mr. Stuart Bevan, K.C., M.P., Mrs. Bevan, Mr. Norman Birkett, K.C., M.P., Mrs. Birkett, Mr. J. D. Cassels, K.C., Mrs. Cassels, Mr. Charles Doughty, K.C., Mrs. Doughty, Judge Holman Gregory, K.C., Mrs. Gregory, Mr. Holford Knight, K.C., Mrs. Knight, K.C., Mr. Cecil Whiteley, K.C., Mrs. Whiteley, Mr. Alderman Collett, Mrs. Collett, Mr. Alderman Greenaway, Mrs. Greenaway, Mr. Alderman Howell, Miss Howell, Mr. Alderman Jacobs, Miss Jacobs, Mr. Alderman Sandle, Miss Sandle, Judge R. E. Hall, Justice and Mrs. Muir Mackenzie, Judge and Mrs. Shewell-Cooper, Mr. R. F. and Mrs. Graham-Campbell, Mr. and Mrs. Hay Halkett, Mr. and Mrs. M. P. Griffith Jones, Mr. and Mrs. Herbert Metcalfe, Mr. C. S. Giddins, J.P., Mr. A. Charles Knight, J.P., F.S.A., Mrs. Knight, Mr. A. Pragnell, J.P., Mrs. Pragnell, Mr. Walter Spyer, J.P., Mr. and Mrs. J. B. Aspinall, Mr. E. H. Tindal-Atkinson, C.B.E., Miss Tindal-Atkinson, The Hon. L. S. and Mrs. Bristowe, Mr. and Mrs. H. Roper Barrett, Colonel Blackham, C.B., C.M.G., Captain J. F. C. Bennett (Mayor of Westminster) and the Mayoress of Westminster, The City Architect and Surveyor, Mr. and Mrs. Percival Clarke, Mr. and Mrs. E. R. Cook, Mr. Wilfred Dell, Dr. and Mrs. Edwin Deller, Mr. and Mrs. R. H. Drayton, The Rev. J. H. Ellison, M.V.O., Mrs. Ellison, Mr. F. H. Errington, C.B., The Hon. Mrs. Errington, Mr. W. E. Howard Flanders, Mr. and Mrs. W. H. Foster, Dr. and Mrs. Edwin Freshfield, Mrs. Galsworthy, Mr. F. M. and Mrs. Guedalla, Capt. A. Larking, C.B.E., Mr. P. H. and Mrs. Martineau, Mr. W. W. Nops, LL.B., and Mrs. Nops, Mr. A. F. J. Pickford, B.A., and Mrs. Pickford, Mr. H. S. Syrett, LL.B., C.B.E., and Mrs. Syrett, Mr. W. Thoday, LL.B., Mr. E. S. Underwood, F.R.I.B.A., Mrs. Underwood, Mr. T. G. Waterlow, Mr. W. J. Waterlow.

After the loyal toasts had been honoured the Lord Mayor proposed the toast of the Lord High Chancellor. Lord Sankey, he said, had won golden opinions from all classes of His Majesty's subjects for the manner in which he had filled his exalted position. It was not, as a rule, desirable that judges should be taken from their judicial duties to conduct subordinate enquiries, but Lord Sankey's chairmanship of the Aliens Advisory Committee and the Royal Commission on the coal industry had been notable exceptions to this rule. His recent speech on the Coal Bill in the House of Lords had been a triumph of eloquence and lucidity, and the judges who were assembled there from distant parts of the Empire would appreciate the interest which his lordship took in the Committee of the Privy Council. He congratulated Lord Sankey upon the Honorary Doctorate of Common Laws which the University of Oxford had recently conferred upon him.

The Lord Chancellor, after thanking his lordship, remarked that, in spite of the heaviness of the cause list this term, the courts were well abreast of their work. A considerable number of cases in the King's Bench Division concerned motor car accidents; these, though exciting to the participants, were not the most exhilarating type of cases for the judge, counsel and jury, and occupied a great deal of public time. In congratulating Lord Macmillan on his promotion, Lord Sankey referred to his excellent work on various commissions of enquiry. He regretted that he had not been fortunate in his efforts to introduce a Bill to improve the position of the subject when litigating with the Crown or a public department. A measure directed towards this object had been drafted before he had resumed office, but had not met with universal assent. It would have been possible to obtain general assent in cases of contract, but opinion was acutely divided on the advisability of including tort and on the vexed question of discovery. An agreed measure was therefore quite out of the question. He was taking steps to ensure proper consideration for the suggestion of the London Chamber of Commerce in regard to the state of litigation; in his opinion the question ought to be discussed by business men as well as by members of both professions.

The Lord Mayor and the Judicial Bench.

The Lord Mayor then proposed the health of His Majesty's judges. As an admitted solicitor of a good many years' standing he said, he was proud to welcome the judges and the ladies who accompanied them. A Lord Mayor, who, at the beginning of his office, had stood in their Lordships' courts looking up at the Bench above him, and hearing their words of wise advice would be a traitor to his own past if he treated this toast with anything but the deepest respect. This little ceremony had doubtless sprung from a humane desire to acquaint the Lord Mayor with the feelings of the prisoner at the bar, in order that he might learn to temper justice with that kindliness and mercy which he always experienced at the hands of His Majesty's judges. The picture papers were a reminder that judges were, as they should be, human beings who cared for the same recreations as other men, but their ermine robes and wigs reminded us that on occasion they were different from ourselves. It was, however, not as dignified figures that he welcomed their Lordships, but as men who had attained great positions by hard work and brought to their work that human touch that enabled their fellow countrymen to say "Thank God for our judges."

Lord Hanworth, in response, sympathised with the awe felt by the Lord Mayor in the Lord Chief Justice's Court. The Court of King's Bench would always hold its place so long as it had a Lord Chief Justice and a senior judge like Lord Hewart and Mr. Justice Avory, to maintain its traditions. The judges who came from different parts of the Empire gave a picture of free trade within the Empire at law, in which each unit was autonomous, but could come to that great clearing house of law, the Judicial Committee of the Privy Council. A great feature of the colonial judicial system was that its judges were selected from the Bar, and were not, as in foreign nations, appointed as civil servants.

"The Profession of the Law."

Viscount Dunedin, in proposing the health of "The Profession of the Law," pointed out that, although practitioners of the law were largely concerned with the management of disputes, no profession was less quarrelsome than theirs. The *odium theologicum* of the church and the hot disputes of medical men had no counterpart in the legal profession. Moreover, they came into contact with all forms of knowledge, a contact which often engendered in them the wholesome virtue of humility. The Attorney-General stood for those qualities in the English Bar of industry, knowledge of law, eloquence, and just and upright conduct which had won the admiration and confidence of their countrymen. The President of The Law Society filled him with awe as a representative of that branch of the profession to which he had once owed his livelihood.

Sir William Jowitt regretted the absence of Sir Edward Clarke, who was in length of service, merit and the esteem and affections of his colleagues the real head of the Bar. The present world-wide depression had not passed over the Bar, but had been to some extent alleviated by the De-rating Act. Speaking of the cost of litigation, he said that the Bar of England was a strict trade union and like other trades unions, was sometimes roundly abused, particularly by those who knew the least about it. It realised that the interests of its members were subservient to the general welfare of His Majesty's lieges. The Bar Council had already set up a committee to indicate the lines on which reform should take place. The legal profession were fortunate in being about to make a visit to Canada and the United States under the leadership of Lord Dunedin. The visit would prove of great interest both to the profession and to the country as a whole, and would be

of the utmost value in cementing the already firm relationship between the professions in the three countries.

Sir ROGER GREGORY, responding for solicitors, testified to the value to his profession of the Lord Chancellor's interest in its work on poor prisoners' cases. He agreed that solicitors did, perhaps, approach nearer to the heart of the crowd than barristers, and were sometimes able to encourage, sometimes to repress, but always to sympathise. There were few members of the public who did not feel gratitude for the assistance which they had received from their solicitors. He referred to the decision taken that day at the annual general meeting of The Law Society to present to Parliament the Bill which their council had drafted for the protection and relief of persons who had suffered as a result of defalcations by solicitors.

Lord JESSEL then proposed the health of "The Court of Aldermen and the Sheriffs." The court had played a noble part in history, and the assistance of the sheriffs was of great value to the judges, not only in London but on assizes. He coupled with the toast the names of Sir George Truscott, an ex-Lord Mayor, and Sheriff W. P. Neal, the first on the list of aldermen for Lord Mayor.

Sir GEORGE TRUSCOTT, in reply, acknowledged the debt which the city owned to the Central Criminal Court, which was its guide in criminal procedure and practice. He thanked the judges for the kindness and courtesy with which they invariably treated the aldermen and sheriffs at that court.

Sheriff NEAL, on behalf of himself and his colleague, thanked Lord Jessel for his toast.

Lord WRENBURY, in proposing the health of "The Lord Mayor," thanked him on behalf of all the guests for his generous hospitality. The office of Lord Mayor was an arduous one, and no predecessor of Sir William had been more fitted to maintain that great stability and dignity of the City of London which was one of the nation's greatest assets.

The LORD MAYOR, in reply, spoke with regret of the absence of Sir Edward Clarke, and acknowledged the debt of gratitude which he, in common with over fifty predecessors, owed to the able and untiring assistance of Sir William Soulsby.

The Hardwicke Society.

ANNUAL DINNER.

The annual dinner of the Hardwicke Society was held at the Hardwicke Hotel on 2nd July. Among those present were The Rt. Hon. Lord Merrivale, The Rt. Hon. Sir John Simon, K.C.V.O., K.C., Mr. Justice MacNaghten, K.B.E., His Honour Judge Barnard Lailey, The Rt. Hon. Major-General Sir J. E. B. Seely, C.B., Sir Joseph Nunan, K.C., Colonel Sir W. Crooke-Lawless, K.C.V.O., Lieut.-General Sir Travers Clarke, G.B.E., and Lady Clarke, Colonel Sir Stuart and Lady Sankey, Mr. Theobald Mathew and Mr. A. L. Ungoed Thomas.

After the loyal toasts, the health of the Hardwicke Society was proposed by Sir JOHN SIMON, who described it as the most famous debating society in the legal profession. The art of debate was essentially a British art, he said, and was the art of keeping to the point, keeping the temper and addressing oneself to the actual issues which arose in the course of discussion rather than to any pre-arranged line of argument. In the United States a prepared oration was more usual and the speech could often be handed to the reporters in type beforehand, while in the Supreme Court counsel handed his brief to the judge to study after he had delivered his speech. There could be no doubt that upon the cultivation of the art of debate depended the British method of hand to mouth, face to face, each riposte suggested by the latest stroke of the adversary. Nothing, said Sir John Simon, interested him more than to look back upon an experience of the House of Commons lasting over a quarter of a century and to observe the practice of this noble art by some of its most famous exponents. In his early days a distinguished ex-President of the Society, Sir Edward Clarke, had given him a piece of advice that he had treasured all his life. The advice was: "first, never speak on a lawyer's subject; secondly, do not suppose that you can take part in a House of Commons debate by merely coming in just before your name is called and making such observations as occur to you—you must accommodate yourself to the current of the moment like rowing on tidal water; thirdly, unless the debate has taken that turn which enables you to feel that what you had in mind to say really fits, do not say it." The public did not appreciate the degree and strength of the influence exerted in the House of Commons by men who effectively used the art of debate. The effective presentation at the right moment of an argument which came from the heart and hit the point profoundly influenced public judgment and the ultimate action of the Government. The best speeches were not delivered impromptu, but when the speaker transfused a carefully-thought-out speech under the heat and temper of the controversy of the moment. Sir John Simon illustrated his point by many anecdotes of famous speakers; he cited Mr. Winston Churchill as an example of a man who devoted immense care to preparation when this was possible yet could speak eloquently without preparation when necessary. The art of debate meant an effective retort at the point when the opponent thought he had scored, and the debater must listen to what the other man was saying rather than recite to himself what he was going to say. A member of the House of Commons might do much to help his country by cultivating, using and believing in the art of debate. We did not live under a fixed cast-iron constitutional plan, but were all part of an immense growth and development. To this lawyers made an important contribution, no part of which was more important than the practice and preservation of the essentials of the art of debate.

Mr. IFOR LLOYD, President of the Society, welcomed Sir John Simon back to the Bar as a modern Cincinnatus who had retired to the rustic seclusion of the Temple after successfully serving his country in a moment of crisis. Had Sir John not made the appalling mistake in youth of failing to join the Hardwicke Society, he might have been President; in this case he would probably not have risen above the rank of police magistrate, for no past-President of the Society had ever reached the High Court bench. The Society had flourished during the year and held its usual meetings. As a result of the enthusiasm of the librarian for system, the library had been closed since January. When it re-opened the system would probably deter the stoutest heart from ever borrowing books and obviate all danger of loss. A recent addition was a book of reminiscences in which Sir Edward Clarke had annotated the references to himself, and one of the library's most treasured possessions was a magnificent collection of State Trials presented by Mrs. Matthew in memory of Mr. J. T. Matthew. Sir John Simon had betrayed ignorance in calling the Hardwicke Society the chief Bar debating society; it was the only society which could be so called. It taught beginners the art of debate and provided an unrivalled avenue for friendship. Members came to know people from other Inns and other branches of the profession—even Chancery men went to the Hardwicke Society!

"THE BENCH AND BAR."

Mr. C. H. PEARSON, Hon. Treasurer of the Society, said that a barrister who had reached the advanced age of thirty-five sometimes suffered from a fit of despondency when contemplating the great success of the leaders of the Bar and members of the Bench. If he asked himself how it was done, he had only to look at Lord Merrivale, whose greatness had been achieved, for he had not been born in it nor had it been thrust upon him. Mr. Theobald Mathew had been intimately associated with the Bar throughout a lifetime, and yet could still smile and induce "the laughter learnt of friends."

LORD MERRIVALE, supporting the toast, said that the part which the law and its practitioners played in the Commonwealth was not that of a monopoly or despotism; lawyers were at their best when they remembered that they were just citizens. At a crisis the power of the trained mind to influence the honest mind was one of the community's most valuable assets. The judiciary was nearly 1,000 years old; the life of William de Bearfort—judge, lawyer and citizen in the reign of Edward II—showed how high had been the ideals of the Bench in those early days. Bacon's definition of the functions of a judge stood to-day as a standard by which judges could be criticised.

Mr. THEOBALD MATHEW, in response, said that he himself was a junior and nothing more. Juniors were a pathetic race, and deserved some encouragement. They worked hard and were for the most part unappreciated; if they did make a trifle they got more kicks than halfpence, and were held up to ridicule as illustrating the absurdity of the "two-thirds rule." Nothing was more galling than being asked by an ex-pupil to settle a statement of claim which he had been instructed to draw by a member of one's own year. Mr. Mathew himself had recently suffered a severe blow in the promotion to the Bench of Mr. Justice MacNaghten, in whose chambers he had worked for thirty-three years, especially as the leader had taken their joint clerk with him.

Mr. GEOFFREY RAPHAEL, Vice-President of the Society, in proposing the health of the guests, wondered why there were any guests, since nearly everyone there was eligible for membership. He did not know whether to extend to Sir John Simon the fulsome flattery reserved for those who were no longer competitors, or to congratulate him on his return to the Bar. He thanked Lord Merrivale for attesting by his presence his interest in the Society, and Mr. Justice MacNaghten for having come uninvited—or rather for having suggested that he might come. He admitted that he still nursed a grievance against Sir John Seeley: many years ago, when he had been

a small and slovenly member of his school corps, Sir John, as Minister in Attendance at a Royal inspection, had summarily ordered his relegation to the rear rank.

Major-General Sir JOHN SEELY, replying for the guests, said he had recently advised members of a great religious sect, whom he had greeted on behalf of the King, not to look at the sea but to get into it. Similarly, he advised members of the Bar not to look at politics but to join in the political life of the country. The safety of the State depended on the entrance into politics of men of intelligence, vigour and impartiality, for the nation which left the duties of government to a class of professional politicians was doomed to failure. He would support any legal candidate for Parliament, whatever his views might be. He applied then and there for membership of the Society.

The Law Society.

Annual General Meeting.

The Law Society held its annual general meeting on 4th July with Mr. W. H. Foster in the chair.

Sir Roger Gregory and Mr. P. H. Martineau were elected President and Vice-President respectively, and the following members were elected to the Council: Mr. E. E. Bird, Mr. T. H. Bischoff, Mr. F. Ewart Branson, Sir William Bull, Mr. H. T. A. Dashwood, Mr. W. E. M. Mainprice, Mr. C. G. May, Sir Arthur C. Peake, Sir Reginald Lane Poole, Mr. G. S. Pott, Sir Robert Mills Welsford, and Sir John Withers.

The annual report and accounts were put to the meeting and adopted unanimously.

THE SOLICITORS BILL, 1930.

The CHAIRMAN then moved the adoption of this Bill, the text of which was published in this journal, together with the summary of the annual report. The control and discipline of the profession had always, he said, been a matter for the anxious consideration of the Council. For more than two years they had been considering what definite steps ought to be taken to increase that control in order to prevent or mitigate the harm done through the defalcations of the less reputable members of the profession. It had been essential that the profession should deal with the question as a whole. Nearly two years ago the Council had submitted to the Provincial Law Societies a memorandum in the nature of a draft report, in which it had been suggested that all solicitors should be taxed in order to provide a fund for the alleviation of the distress caused by these regrettable incidents. The proposal had not met with the approval of the country solicitors, who had been overwhelmingly in favour of compulsory membership. The Council had therefore drafted a Bill to provide that every member of the profession should become a member of The Law Society, and therefore subscribe to its funds, and that the Society should have power to make rules for the good conduct of the profession, especially with regard to the keeping of proper accounts. These rules were to be approved by the Master of the Rolls, and the Society could be confident that the Council would not suggest any regulation which would interfere with a properly-organised office or impose any new burden upon solicitors.

The proposal for a compulsory audit had been previously made by persons outside the profession. He wished to make it quite clear to the meeting and the public at large that the necessity for consulting the provincial societies had been the sole reason why action had not already been taken. The Bill also made provision for a fund out of which the Council would have discretion to award grants to persons whom it considered to deserve relief. The effect of the Bill should be to unite the profession as members of the Society into a single whole, and, more important still, would give the Society power to call upon a solicitor to account; power which it had never before possessed. He asked the meeting to approve the general principle of the Bill, and not to discuss the details of the rules but to rely upon the Council to impose no undue burdens upon any department of the profession. He warned the meeting that if the Society did nothing further in the matter Parliament intended to impose restrictions upon the profession, many of which would be resented, and that it was better that the profession should control itself rather than that it should be controlled by officials of the State.

Mr. COLEMAN, the President of the Associated Provincial Law Societies, stated that the societies had declared themselves overwhelmingly in favour of the principles of the Bill, and that the few dissentients had mainly taken the view that the provisions were not strong enough. They had not discussed details, but had left them to the Council, subject to their being given equal representation on the Council when the rules were drafted. They did not regard the Bill altogether with enthusiasm, but thought it was a sincere and honest attempt to deal with a difficult situation.

Mr. PERCY BOTTERELL, on behalf of the City of London Solicitors Company, strongly recommended the meeting to approve of the Bill.

CRITICISM OF THE PROPOSED RULES.

Mr. H. W. CARTER proposed an amendment to the effect that the Council should reconsider the Bill and add to it clauses empowering them to make a levy on solicitors of an annual sum not exceeding £2, for the purpose of providing an indemnity fund for clients in cases where solicitors, acting as solicitors, had been convicted for improper conversion of their clients' funds. He compared the Council to a mountain, which, after a long labour, had produced a mouse. Some of the provisions of the Bill, he said, went too far, while others did not go far enough. More than ninety-nine per cent. of the profession were absolutely honest. Nevertheless, some action was necessary in view of the threat that outside steps would be taken. His criticism was that any regulations which the Council might frame for submission to the Master of the Rolls would not be worth twopence unless they provided for some form of compulsory audit and for bringing accountants into solicitors' affairs. There were a large number of solicitors who, like himself, kept accounts of their clients' money, prided themselves on their book-keeping, and did not wish accountants to be brought in from outside to give them certificates. If a solicitor had made up his mind to act dishonestly he could write cheques on any account and no system of auditing would prevent defalcation. The provision for compulsory membership should be retained and the Council should ask for power to levy £2 a head on every practising solicitor; this should be laid out in two insurance policies with two separate firms and would assure an enormous sum for the relief of defrauded clients. This would suit all departments of the profession and inspire confidence in the public.

The amendment was seconded by Mr. F. W. BROWN (Ruislip), who pleaded for the optional exemption of elderly members of the profession.

Mr. BARRY O'BRIAN strongly expressed the opinion that the Bill would ensure nothing but the prosperity of Chartered Accountants. The profession was suffering from an undue complex of responsibility and not enough had been said on the other side. He would not submit to a label which stigmatised the profession as a whole, or a great part of it, as dishonest. *The Times* had described the solicitors' profession as one to be trusted; he cared more for that opinion than for the views of politicians. He did not object to compulsory membership, although its effect would be to turn the luncheon-room into a club for both sexes. He warned the meeting that this Bill might be the thin end of the wedge, and that under a Socialist Government the profession might be required to pay other levies of various kinds. He declined to vote on either side.

Mr. GEOFFREY GRIFFITH spoke against the Bill as a capitulation to popular clamour. No individual trader outside the profession would tolerate for a moment the suggestion that his accounts should be kept by a Government Department. No member of the Society would object to contributing voluntarily £1 per annum for the protection of clients; the total would provide a large insurance. If compulsory membership were introduced, there would be no honour in being a member of the Society. The Scottish law was adequate to protect the public; no one ever heard of a defaulting solicitor in Scotland, and the English law was equally adequate. He recommended the transfer of all disciplinary powers from the Society to the Department of the Law Officers of the Crown, leaving the Society free to deal with the protection and advancement of the profession.

Mr. HERBERT SYRETT stigmatised the proposal to give the Society power to make rules for the investigation of solicitors' accounts as so much eye-wash; Parliament would consider the proposed steps quite inadequate. The first part of the Bill was excellent, where it related to the proposed relief fund, but it was absurd to suppose that the Council could effectively supervise the accounts of 15,000 solicitors all over the country. To that extent it was a Bill for endowing the accountant's profession. They were all accustomed to the methods of the income-tax inspectors, and a second inquisition of the kind would be intolerable. Moreover, professional accountants in the provinces acquired a great deal of information which somehow drifted round to the persons with whom a firm did business, and for this reason some firms preferred to employ an accountant who lived at a distance. However many accounts were kept, there was nothing to prevent a dishonest solicitor from helping himself, nor the banker—if they were kept at the same bank—from transferring credit from one account to another if it became

overdrawn. Lloyd's and the Stock Exchange did not have a compulsory audit, and there was no reason why solicitors should have.

THE COMPULSORY PROVISION REJECTED.

The amendment to levy an annual sum of £2 was negatived by a large majority, but Mr. SYRETT, seconded by Mr. T. B. HAZELDENE, proposed another amendment. Clause 3 (1) of the Bill as before the meeting read :—

"The Society with the concurrence of the Master of the Rolls may make and from time to time alter revoke and amend rules for the professional conduct and discipline of solicitors; and, with the like concurrence, shall make and from time to time alter revoke and amend rules

(*a*) as to the opening and keeping of banking accounts into which a solicitor shall pay the money of his clients and as to the conditions under which such accounts shall be operated;

(*b*) as to keeping by a solicitor of accounts containing such particulars and information as to moneys received held or paid for or on account of clients as may be prescribed by such rules.

Mr. SYRETT proposed that the whole of paragraphs (*a*) and (*b*) be deleted, and replaced by the words—

"for carrying into effect the above-mentioned purposes."

The arguments in favour of this amendment, which had already been stated at length by speakers on the first amendments, were recapitulated in a lively debate. When put to the vote it was carried by a majority of 108 votes to 75.

The CHAIRMAN announced that he would exercise his right of demanding a poll. After further discussion, however, he decided to accept the amendment and withdraw the demand for a poll if the meeting would approve the general principle of the Bill. A resolution to this effect was thereupon carried.

A consequential amendment to sub-s. (3), deleting the reference to the keeping of accounts, was also passed.

Mr. F. B. OSBORNE reminded the Chairman that the Society now possessed no power to investigate the affairs of solicitors who were reported to them. It would be necessary either to frame bye-laws assuming this power, or to add an appropriate provision to the Bill. The Chairman undertook that the necessary provision should be made.

A ROYAL COMMISSION ON THE COST OF LITIGATION.

Mr. C. L. NORDON was to have moved the resolution of which he had given notice :—

"That in the opinion of this meeting of members of The Law Society it is desirable that a Royal Commission should be appointed to consider the high cost of litigation and to report on the means whereby the present system under which lawsuits are conducted may best be revised with a view to greater economy, rapidity and certainty."

He was assured by the Chairman that the matter was in the hands of the Bar Council, and accordingly postponed his motion.

A vote of thanks to the retiring President, Mr. FOSTER, for his work during the past year was carried unanimously.

Societies.

The Law Society.

STUDENTSHIPS FOR 1930.

The Council, acting on the recommendation of the Legal Education Committee, have made the following award of two studentships of the annual value of £40 each, tenable for one year, but renewable at the discretion of the Council :—

CLASS A.

(Candidates under 19 years of age.)

Mr. ALEXANDER CHARLES ROBERTS (King's School, Canterbury, and The Law Society's School).

Mr. JOHN EDWARD SIDDALL (King Edward VII School, Sheffield, and the University of Sheffield).

Mr. Roberts is articled with Mr. C. J. Roberts, of Folkestone, and Mr. Siddall is articled with Mr. W. B. Siddons, of Sheffield.

Each studentship is awarded on the condition that the holder proceeds and continues to pursue a course of studies for a Law Degree.

FINAL EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Final Examination held on the 16th and 17th June, 1930 :—

Geoffrey Clifford Adams, William Henry Almond, Lawrence Graham Appleby, Maurice Arram, LL.B. London, Arthur Ashton, John Roderick Horton Baker, John Bannister, Alban Clement Herbert Barchard, B.A. Oxon, Harold Edgar Barker, Francis Leslie Barlow, Kenneth Edward Beart, B.A. Cantab, Richard Sherwell, Beattie, B.A. Cantab., Lewis Ralph Bell, Richard Stephen Robert Berry, B.A., LL.B. Cantab., Charles Robert Ingram Besley, Lewis Frederick Biden, Reginald Lawrence Bignell, George Charles Bird, Arthur Boothman, Aubrey Boutwood, Wilfrid Lawson Broad, Richard Evelyn Bromet, B.A. Cantab., Alan Brown, Thomas Kennett Brown, Clifford Buckley, John Beaumont Buckwell, Richard Moubray Buller, B.A. Oxon, Percival Leslie Burley, M.A., LL.B. Cantab., Harry Beeley Burrows, M.A. Cantab., William Robert Burrows, Harold Ellis Bussey, LL.B. Leeds, Charles I'Anson Carr, Henry Davies Carter, John Chadwick, B.A. Cantab., Ralph Nicholas Chard, Bertram St. John Pendrill Charles, B.A. Cantab., Constance Aveline Chidell, Winfrid Kenneth Clarke, Raymond Clifford Clifford-Turner, B.A. Cantab., Harry Cohen, LL.B. Leeds, Hugh Garrett Collin, B.A. Cantab., Augustus Conway, LL.B. Leeds, Edward George Sherman Cook, Maurice Albert Coombes, Geoffrey Frank Coombs, Henry Cooper, Marshall William Coupe, Gerald Frankcombe Court, Lionel Courtier-Dutton, John Leofric Robert Croft, LL.B. London, Leslie George Downton Croft, B.A., LL.B. Cantab., Robert Crute, Charles Edgar Cullis, Horace William Daniels, Charles John Howard Davidson, Arthur Gwynne Davies, B.A., LL.B., Cantab., Arthur Howard Davies, Arthur Raymond Davies, Frederick Savi Vipond Davies, B.A. Cantab., Gweneth Ellis Davies, Horace Ronald Davies, Peter Davies, Thomas Derek Ellis Davies, Norman Dawson, Gilbert Edward Debenham, Charles Leslie Dewhurst, Thomas Lutwyche Dinwiddy, B.A. Oxon, James Alan Driver, Maurice William Driver, Henry George Austen de L'Etang Herbert Duckworth, B.A. Cantab., Reginald James Dutton, Frederick Edwards, Arnold Eliott, George Espley, Arthur Exton, John Muirhead Patterson Farrow, B.A. Oxon, Henry Tatham Fawcett, B.A. Oxon, George Martin Fearnley, B.A. Oxon, Martin Stanley Fisher, William Hugh Trueman Fisher, B.A. Cantab., Rupert Ambrose Percy Fison, B.A. Cantab., Robinson Joel Fletcher, Morris Norman Tadelis Freedman, B.A. Cantab., Harry Freeman, William Frith, John Kendall Gale, LL.M. Birmingham, Stephen Edward Gateley, John Howard Gaunt, LL.B. Manchester, Patrick William Pilkington Gee, B.A. Oxon, Edward Gibson, B.A., LL.B. Cantab., Norman Gibson-Singleton, John Frederick Ginnett, Cyril Burnham Godfrey, William Shields Godfrey, Arthur Louis Goldschmidt, Alan Paul Good, B.A. Oxon, Clarence Henry Goude, Catlow Greenhalgh, John Kyrle Hankinson, James Alexander Hanna, Sidney Harmston, Charles Wyndham Harris, David William Harris, Euan Cadogan Harris, B.A., LL.B. Cantab., Stanley Harris, George Clifford Harrison, Kenneth Robert Hartley, Charles Francis Hawes, B.A. Cantab., Geoffrey Haworth, Rowland Hugh Quartus Hayes, Ernest Joseph Hazel, Denys Gordon Hobkirk, B.A. Oxon, Robert Basil Hodgkinson, Granville Holden, Charles Rowland Hopwood, B.A. Cantab., Thomas Alfred Wilson Hoyland, John Gwynne Hughes, Rex Dennis Hyem, John Iliff, B.A. Cantab., James Osmund Rowe Illingworth, Alfred Robert Jacks, Robert Pilkington Jackson, Charles Albert James, B.Sc. London, Charles Jefferson, Richard Stringer Johnson, B.A., LL.B. Cantab., Hywel Glyn Jones, John Lancelot Jones, Philip Suttill Jones, Ronald Keogh, Walter Harry Kester, Edward Marmaduke Breckon Kidson, Austin Gerald Comyn King, Walter John Knight, Oliver Paul Ladyman, Arnold Wilson Lamb, Herbert James Lander, John Peter Lane, Cyril Edward Latter, Roderick Le Mesurier, B.A. Cantab., Walter Abraham Leon, M.A. Cantab., Stephen Philip Levy, Edward John Lightfoot, George Cecil Lightfoot, B.A. Oxon, Albert Paulus Livingston, B.A., LL.B. Cantab., Frederick Stuart Lodder, Francis Dudley Lys, Walter Joseph McGlue, Janet Evaleen Mack, LL.B. Manchester, Eric Harry McLean, Norah Joyce Mahany, B.A. Cantab., David Matthew, B.A. Oxon, Charles Bertram Matthews, Walton Platt Ryder Mawdsley, B.A. Oxon, William Maurice Mell, LL.B. Sheffield, Henry Lyster Meyrick, Robert James Middlemas, B.A. Cantab., Frank Midgley, Hugh Morgan Elias Morgan, B.A. Cantab., Richard Mumby, Romilly Southwood Ouvry, B.A. Oxon, Joseph Paling, David Roy Balfour Park, Charles Harland Parker, Frank Leslie Parker, Thomas Harry Parkinson, LL.B. Birmingham, Ronald Harry William Pearless, Charles Samuel Perkins, Hubert Perrett, B.Sc. London, John Hamilton Piesse, Archibald Robert Piper, B.A. Oxon, Ernest Jacob Place, Rex Pogson, Charles Antony Potter, Jack Alan Howard Powell, LL.B. Wales, Basil Napier Ratcliff, Robert Arundel Ratcliffe, B.A., LL.B. Cantab., Sidney Alfred Redfern, B.A., LL.B. Cantab., Brinley Richards, Hywel Richards, B.A. Oxon, Ernest Stanley Rickards, B.A. Cantab., Francis Charles Roberts, John Davenport Roberts, Arthur Desmond Robinson, George Gilmour Robinson, M.A. Oxon, Reginald Robson, Mary Roney, B.A. London, Gilbert Harry Rountree, Edward Hugh Lee Rowcliffe, Frederic Keal Lister Sandbach, Cyril Edward Russell Sanderson, Henry

Edmund Sargant, B.A. Cantab., Harry William Reginald Scofield, William Russell Scurfield, St. John George Auguste Sechiari, Alexander John Patrick Sellar, B.A. Oxon, Muhammad Shams-uz-Zoha, B.A. Calcutta, LL.B. Belfast, Nathaniel Reid Sharman, B.A. Oxon, Roger Buckley Sharp, B.A. Cantab., Charles Turner Shaw, Julius Silman, LL.B. Leeds, Humphrey Slade, B.A. Oxon, Hillard Slavid, Terence Sloan, Alan Smith, Geoffrey Hortin Smith, Henry Oldham Smith, Lawrence Richmond Smith, B.A. Cantab., Robert Francis Fleming Smith, Edward Southworth, Henry Nathan Sporborg, B.A. Cantab., Joseph Spring, B.A. London, Eric Stafford, John Wyndham Stanton, B.A. Cantab., Vivian Steinart, B.A. Cantab., George Herbert Swann, Laurence Arthur Sylvester, George Percy Taylor, LL.B. Manchester, William Alan Taylor, George Temperley, Oliver Thornhill Tewson, John George Thacker, Annie Meryl Thomas, LL.B. Birmingham, Arthur Fisher Thomas, David Leslie Roberts Thomas, George Price Thomas, John Cecil Barry Thompson, James Harry Keith Thomson, Thomas Anthony Tolhurst, John Trethowan, John Frederick Vernon, John Eardley Vine, William Newton Wade, Lawrence Wagstaffe, James Wallace, George Henson Waller, B.A. Oxon, Joseph Cyril Walter, Andrew Waterworth, William Kenneth Watkins, Charles Reginald Watson, B.A., LL.B. Cantab., Bernard James Apthorpe Webb, B.A. Cantab., Charles Leonard Stuart Weedon, Eugene Carel Weiss, LL.D. Breslau, Ernest Arthur Whitehead, Laurence Holland Whitlamsmith, B.A., LL.B. Cantab., Richard Hawksley King Wickham, George Wightman, Lionel Wigram, Harold Wilks, Freke Bulkeley Wynne Williams, John Frederic Stuart Williams, B.A. Cantab., Ronald Watkins Williams, Eric Willings, Robert Metherell Willis, Frank Wilson, B.A. Cantab., Thomas Wilson, Walter Eric Wolff, B.A. Cantab., Abe Wood, Frederick Colin Dean Wood, B.A. Cantab., Herbert Wood, Henry Rowland Wormald, B.A. Leeds, Edwin Yates.

No. of Candidates, 318. Passed, 261.

The Council have awarded the following prizes: To Euan Cadogan Harris, B.A., LL.B. Cantab., who served his Articles of Clerkship with Mr. Kenneth Derry Woodroffe, of the firm of Messrs. Woodroffes, of London, the Edmund Thomas Child Prize, value about £21; to Clarence Henry Goude, who served his Articles of Clerkship with Mr. George Hulme, of the firm of Messrs. G. Stevenson & Son, of Leicester, the John Mackrell Prize, value about £13.

INTERMEDIATE EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Intermediate Examination held on the 18th and 19th June, 1930. A candidate is not obliged to take both parts of the Examination at the same time.

First Class.

Lionel Benjamin, Alfred Nigel Barton Birch, Leonard Goodwin George Breeze, David Merrick Townsend Coles, Werner Ralph Davies, James Arthur Fairclough, David Caldicott Heald Jenkins, Leslie Arthur Owen, Leslie William Slade, James Nichols Stothert, Jack Charles Palmer Taylor, Charles Selby Tilly, Gerald Charles Tinsdill, William Vaughan Williams, B.A. Wales.

Passed.

Thomas Nyrddin Baker, Edward Alexander Storey Barnard, Nancy Hickling Barratt, Jesse William Beaumont, Dan Swithin Bentham, William Bodle, Melrose Atherton Booth, David Robert Boult, Charles Adrian Boulton, Ronald Marr Brydone, Wynston Mather Burnside, Harry Cook, John Charles Cotton, Olive Cowl, Lionel Sydney William Cranfield, Hubert Aubrey Dodman, Joshua Thomas Evans, John Charles Kelsey Everett, B.A. Cantab., Frank Stuart Fryer, Joseph Anthony Garnett, Leonard Gordon, Hubert Frederick Thomas Gough, Robert Henry Green, Basil Eric Greene, Alfred Norman Gwynne, Francis William Holt, B.A. Oxon, Brian Hopkinson, Robert Michael Hornsby, Maurice Hudgell, Eric Jackson, Philip Thomas Jackson, John Frederick Jay, Eric Farrer Kirk, James Foulds Knape, Frank Norman Walter Lockyer, Robert Lunn, Raymond Clarence Lyon, Charles William March, George Cameron Martin, Gordon Hume Mitchell, Rosamond Morley, Winston Phineas Moses, George Robert Mott, Rodney Graham Page, Tolver Owen Berbera Paget, John Henry Payling, Harold Edwin Piffe-Phelps, Alfred Edwin Poole, Margaret Swale Poole, Monteith Arthur Reece, Henry Charles Reed, Douglas William Riley, Joseph Thomas Robins, Frederick Herbert Rover, Ronald David Saunders, Denis Arnot Schierwater, Charles Henry Stockton, Geoffrey John Cameron Taylor, B.A. Oxon, Albert Henry Throssell, Hubert Tisdall, Edward George Soley Tomley, Elliott Henry Whitfield, George James Kenneth Widgery, Harry McCheyne Wilkinson, Vivian Jones Williams, Joseph Edward Wilson, Walter Wolfson, Howard Ernest Knoyle Worth, William Stanley Yates.

The following candidates have passed the Legal portion only:—

James Martin Abell, John Bryan Allinson, Benjamin Rhodes Armitage, B.A. Cantab, Harold Edwin Barrett, George Erskine Barrow, William Whitehead Hicks Beach, B.A. Cantab., William Bennett, Edward Roger Bickley, George Billington, Harold Edgar Bold, Eric George Broad, Ronald Bathurst Brown, Alaric Humphry Bruce-Mitford, B.A. Oxon, Lionel Percy Carver, Cyril Clark, Henry Clayton, Archibald George Albert Cole, Arthur Herbert Cole, George Bart. Cooper, Arthur Henry Counsell, Clifford Cowling, Derek Cragg-Hamilton, Bertram Cupit, Gerald Wyndham Davey, Ralph Thomas Davis, Philip Charles Dendy, Clifford Walter Emptage, Keith David Erskine, Aranwen Evans, Maurice Murrowood Firth, Robert Edward France-Hayhurst, Robert James Fuller, Kathleen Beatrice Lydia Giles, Joseph Humber Glover, Arthur Gerald Hagger, Alec Cullen Thompson Hancock, B.A. Cantab., Wilfred William Hawkins, William Ernest Hebden, Harold Jonas Higham, Donald Alexander Horn, Francis Gerard Hunt, Thomas Hunter, Thomas Reginald Ibbetson, Harold Sagar Jackson, Thomas David Bland Kimpton, Eric Charles Kirton, B.A. Manchester, Hubert Frederick Knight, Gerard Vincent Lake, Harry Ferguson Langstaff, John Grundy Leaf, Stanley Walter Light, James Ellis McComb, Raymond Arthur McKenzie, Donald MacLeod, John William Marsh, B.A. Cantab., Charles Patrick Maturin, B.A. Cantab., John Sale Collingwood Maughan, B.A. Cantab., Thomas Dunbar Morgan, Hugh Gordon Murton-Neale, Ernest Peck, Thomas Francis Henry Pethick, Lewis Alfred Pritchard, Richard Gordon Procter, William Herbert Richardson Radford, Annie Florence Raeburn, Philip Isaac John Chorley de Walton Reade, Arthur Edward Riley, Ronald Gordon Lockhart Rivis, Esmond Richard Roney, B.A. Oxon, Richard Leonard William Rons, Dudley Bridger Rubie, John Allan Sewart, Thomas Spensley Simey, B.A. Oxon, Dennis Clitherow Smith, Walter Smith, Alvaro Maria De Lourdes Soares, Robert Thompson Stoneham, William Tarlo, Francis James Trentham, Miles Turnell, Harold Albert Turner, Ernest Robson Underwood, Peter Gerald Upcher, Cedric Knowles Wallis, Guy Melmoth Walters, Edward Percy Ward, Edmund Gerald Waters, Geoffrey Herbert Whittington, Charles Maldwyn Wilkin, James Taylor Wilkinson, Kenneth Eliot Williams, Arthur William Wood, Tom Philip Woodbridge.

No. of Candidates, 245. Passed 176.

The following candidates have passed the Trust Accounts and Book-keeping portion only:—

Elliot Barnard Allard, Thomas Anstey, M.A. Cantab., Herbert Appleby, Lindsey Middleton Aspland, Henry Charles Barton, John Mayman Barton, Guy Stanley Maitland Birch, George Edward Bouskell-Wade, B.A. Oxon, Mervyn Anthony Britton, Mary Alice Brown, William Evan Bufton, LL.B. Wales, Avalon Saint George Bulleid, John William Calvert, Douglas Carey, B.A. Cantab., John Maitland Carr, B.A. Cantab., Edwin William Carter, Thomas Needham Cartwright, Thomas Rhodes Catterall, Bernard Alfred Catton, Brian Henry Clegg, Cecil Susman Cohen, Kenneth Davey Cole, B.A. Oxon, Thomas Sharp Crosbie, Marcus Davis, George Reginald Thomas Eastman, William Edwards, Walter Briaris Farmbrough, Eric David Morley Farmer, B.A. Oxon, Reginald Arthur Collingwood Forrester, B.A. Oxon, Philip Fox, Leonard William Funston, George Frederick Furniss, Edwin Charles Giddings, B.A. Oxon, Daniel Grudgings, Nancy Marion Hackwood, B.A. Cantab., Mark Allen Harris, Frank Cyril Harrison, Thomas Ruthven Hepworth, Robert Musgrave Hilton, Elizabeth Antoinette Holt, John Holt, LL.B. London, Hector Wilfred Sawell, Homewood M.A. Cantab., Lawrence John Hallam Horner, B.A Oxon, Denis Arthur Sydenham Houghton, B.A. Oxon, John Albert I'Anson, Lucian Donovan Ingham, Francis Bertrand Hart Jackson, B.A. Cantab., Charles Edward Jessop, Ernest Johnson, Ronald John Jones, Richard Lane, B.A. Cantab., Robert Edis Legat, Donald Bucking Leonard, Dennis Isambard Levy, May Lewis, John Howes Linnell, Cyril John Bevan Manning, Henry Louis Johnson Massey, Michael William Blount May, B.A. Cantab., William Anthony Merriman, Walter Mitchell, Arthur John Moon, B.A. Cantab., John Whitley Nance, LL.B. Hons. Liverpool, Frederick Hedley Nicholson, John Lefroy Owen, Humphrey Leslie Malcolm Oxley, Maurice Philip Pariser, Robert Charles Pearce, Henry Philip Abercrombie Peaty, Reuben Raymond Pollard, Philip William Rolph Pope, B.A. Cantab., Robert Preston, Charles Maurice Priddey, Lawrence Vernon Priestley, LL.B. Leeds, George Morrey Roberts, Geoffrey Roberts, Henry Doig Angus Robertson, Norman Crawford Roulston, B.A. Oxon, John Dunscombe Rowland, Fenwick Sanderson, Frederick Robert Mawdesley Serjeant, Harry Gillett Sherrin, Arthur Leslie Smith, Ernest Smith, Nigel Warington Smyth, B.A. Cantab., Samuel Soames, B.A. Oxon, Louis Steinmark, James Stanley

Stringer, Ursula Monica Stringer, Frank Hoskin Taylor, Reginald Fred Taylor, Leslie Edward Thompson, Ronald Thornely, B.A. Cantab., Michael Trethowan, Reginald Francis Trump, Percy Walsh, David Ronald Hugh Walters, B.A. Oxon, Hugh Clough Waters, Robert Clive Whiting, Ronald Bowen Whittingham, Daniel Gwyndaf Williams, Robert Thomas Williams, John Peter Winckworth, James Yates.

No. of Candidates, 244. Passed, 187.

Rules and Orders.

THE WORKMEN'S COMPENSATION RULES (No. 1), 1930.
DATED JUNE 16, 1930.

1. In these Rules "the principal Rules" mean the Workmen's Compensation Rules, 1926,(*) as amended.

2. Rule 19 of the principal Rules shall be amended as follows:—

In paragraph (1) (*a*) (i) the words "an award for the payment of" shall be omitted and the word "pay" shall be substituted therefor.

In paragraph (1) (*a*) (ii) the words "an award for the payment of" shall be omitted and the word "pay" shall be substituted therefor; and the words "and pay such sum into court" shall be omitted.

In the final sentence of paragraph (1) the words "to an award" shall be omitted.

In paragraph (2) the words "to an award" shall be omitted.

In paragraph (6) after the word "weekly" where it occurs for the first time there shall be inserted the words "or lump sum"; and the words "or the lump sum paid into Court" where they occur for the first time shall be omitted.

In paragraph (6) the clauses lettered (*a*), (*b*), (*c*) and (*d*) are hereby revoked and the following clauses shall be substituted therefor:—

"(*a*) There shall be deemed to be an agreement within the meaning of section 23 of the Act and either party may send to the Registrar a memorandum setting out the facts in relation to such submission and payment into Court (if any) and the acceptance thereof in accordance as far as circumstances will permit with the forms in the Appendix, and the Rules as to the recording of a memorandum of agreement shall apply as far as may be, and the arbitration shall be stayed pending the determination of the question whether the memorandum shall be recorded.

(*b*) If the memorandum is recorded the arbitration shall be stayed, but the Judge may on application made to him by any party to the proceedings make such award as to costs as in his discretion he shall think proper.

The party making such application shall serve on each of the other parties seven clear days' notice of his intention to make such application and shall at the same time file a copy of such notice with the Registrar.

(*c*) If the memorandum is not recorded, the arbitration shall proceed and the provisions of paragraph (8) of this Rule shall apply as far as may be."

In paragraph (7) after the word "nevertheless" there shall be inserted the words "subject to the provisions of paragraph (6) of this Rule"; and after the word "weekly" in both places where it occurs there shall be inserted the words "or lump sum."

In paragraph (8) after the words "if the weekly" there shall be inserted the words "or lump sum"; and the words "to an award" shall be omitted.

3. After Rule 29 of the principal Rules, the following Rule shall be inserted and shall stand as Rule 29A:—

"29A.—(1) If an employer ends or diminishes a weekly payment otherwise than in accordance with the provisions of section 12 of the Act, the workman may file a request for arbitration (if arbitration proceedings are not already pending between him and his employer), and may in the proceedings so instituted or in the pending proceedings (as the case may be) apply to the Judge for an interim award ordering the employer to pay to the workman forthwith such a lump sum as shall represent the weekly payment ended or the amount by which the weekly payment has been diminished, calculated from the date when the weekly payment was ended or diminished till the date of the hearing of the application or as near thereto as circumstances will admit, and to pay the amount of the weekly payment to the workman every week from the termination of the period covered by the said lump sum till the date of the hearing of the arbitration or further order. And the Judge may make an interim award accordingly or for such lesser amount or amounts as the Judge may think proper, but such award shall be without prejudice to any order which the Judge may make on the hearing of the arbitration, including an order for repayment by the workman of the moneys ordered to be paid by the interim award or any part thereof.

(2) At least two clear days' notice in writing of such application as aforesaid shall be served on the employer. Such notice shall be signed by the applicant or his Solicitor and three copies shall be left with the Registrar.

(3) Subject to the provisions of this Rule the practice of the County Court with regard to interlocutory matters shall apply so far as circumstances will admit."

4. The Appendix to the principal Rules shall be amended as follows:—

(*a*) After Form 11 the following form shall be inserted and shall stand as Form 11A.

"Form 11A.

APPLICATION FOR INTERIM AWARD.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the above-named A.B. will on the day of , 193 , apply to the Judge of the above-named Court at at o'clock in the noon for an interim award ordering the said C.D. to pay to the said A.B. forthwith the sum of £ , being the aggregate of a weekly sum of £ calculated from the day of , 193 ,(†) to the date of the hearing of this application and also to pay to the said A.B. the sum of £ every week from the date of the hearing of this application till the hearing of the above-mentioned arbitration, and that all necessary directions may be given.

And for an order directing how the costs of this application are to be borne.

Dated the day of , 193 .

To the above-named C.D.
and to the Registrar of
the said Court."

(*b*) Form 15 is hereby revoked and the following form shall be substituted therefor:—

"Form 15.

NOTICE BY RESPONDENT OFFERING TO PAY A WEEKLY OR LUMP SUM WITH OR WITHOUT A DENIAL OF LIABILITY IN THE CASE OF AN INJURED WORKMAN.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents C.D. & Co., Limited, admit their liability to pay compensation in the above-mentioned matter.

And they hereby submit to pay to the applicant the sum of £ in satisfaction of such liability.

[*Or*, And in satisfaction of such liability they hereby submit to pay to the applicant the weekly sum of £ , such weekly payment to commence as from the day of , and to continue during the total or partial incapacity of the applicant for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

And submit to pay to the applicant forthwith the amount of such weekly payments calculated from the day of until the first Saturday [*or other usual pay day*] after this submission is recorded as an agreement, and to pay thereafter the said sum of £ to the applicant on Saturday [*or other usual pay day*] in every week.]

[*Or, where liability is denied,*

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, hereby submit to pay to the applicant the sum of £ in satisfaction of the compensation payable in the above-mentioned matter.

[*Or*, That the respondents, C.D. & Co., Limited, in satisfaction of the compensation payable in the above-mentioned matter, hereby submit to pay to the applicant the weekly sum (*follow from above down to the words 'in every week'*).

And further take notice, that, notwithstanding such submission, the respondents deny their liability].

And further take notice, that the address of the said respondents is as follows: (*state the address*).

Dated this day of .

(Signed)
Solicitors for the Respondents,
C.D. & Co., Limited.

To the Registrar of the Court, and
To the Applicant, A.B."

* S.R. & O. 1926 (No. 448), p. 829.

† Date when weekly payment was ended or diminished by employer.

(*c*) After Form 15 the following form shall be inserted and shall stand as Form 15A :—

"Form 15A.

NOTICE BY RESPONDENT OFFERING A LUMP SUM WITH OR WITHOUT A DENIAL OF LIABILITY IN THE CASE OF A DECEASED WORKMAN.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, admit their liability to pay compensation in the above-mentioned matter, and herewith pay into Court the sum of £ in satisfaction of such liability.

[*Or, where liability is denied,*

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, hereby submit to pay the sum of £ in satisfaction of the compensation payable in the above-mentioned matter.

[*Or*, That the respondents C.D. & Co., Limited, herewith pay into Court the sum of £ in satisfaction of the compensation payable in the above-mentioned matter.]

And further take notice that, notwithstanding such submission [*or payment into Court*], the respondents deny their liability.

And further take notice, that the address of the said respondents is as follows : (*state the address*).

Dated the day of

(Signed)
Solicitor for the Respondents,
C.D. & Co., Limited.

To the Registrar of the Court, and
To the Applicant, A.B., and
To the Respondents
(*if any, naming them*)."

(*d*) Form 16 is hereby revoked and the following form shall be substituted therefor :—

"Form 16.

NOTICE OF FILING OF OFFER TO PAY A WEEKLY OR LUMP SUM WITH OR WITHOUT A DENIAL OF LIABILITY IN THE CASE OF AN INJURED WORKMAN.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they admit their liability to pay compensation in the above-mentioned matter and submit to pay to you the sum of £ in satisfaction of such liability.

[*Or*, and submit to pay to you the weekly sum of £ in satisfaction of such liability.]

[*Or*, TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they deny their liability to pay compensation in the above-mentioned matter, but that they submit to pay to you the sum of £ in satisfaction of your claim.

(*Or*, but that they submit to pay to you the weekly sum of £ in satisfaction of your claim.)]

If you elect to accept such weekly or lump sum in satisfaction of your claim, you must send to the Registrar of this Court, and to the said C.D. & Co., Limited, a written notice of acceptance forthwith by post, or leave such notice at the office of the Registrar, and at the residence or place of business of the said C.D. & Co., Limited.

If you send such notice, the arbitration will be stayed pending the determination of the question whether a memoran dum shall be recorded of the above submission and of your acceptance.

In default of such notice, the arbitration will be proceeded with.

Dated this day of 19 .

To the Applicant,

Registrar."

(*e*) Form 17 is hereby revoked and the following form shall be substituted therefor :—

"Form 17.

NOTICE OF FILING OF OFFER OF A LUMP SUM WITH OR WITHOUT A DENIAL OF LIABILITY IN THE CASE OF A DECEASED WORKMAN.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they admit their liability to pay compensation in the above-mentioned matter, and have paid into Court the sum of £ in satisfaction of such liability.

[*Or*,

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they deny their liability to pay compensation in the above-mentioned matter, but that they submit to pay the sum of £ in satisfaction of the compensation payable in the above-mentioned matter. (*Or*, but that they have paid into Court the sum of £ in satisfaction of the compensation payable in the above-mentioned matter.)]

If you are willing to accept the sum offered in satisfaction of the compensation payable in the above-mentioned matter, you must send to the Registrar of this Court, and to the said C.D. & Co., Limited, and to the other respondents [*or, where this notice is sent to a respondent*, to the applicant and the other respondents], a written notice of acceptance forthwith by post, or leave such notice at the office of the Registrar and at the residence or place of business of the said C.D. & Co., Limited, and at the residence or place of business of each of the other respondents [*or* of the applicant and each of the other respondents].

If you and all the respondents (if any) other than the said C.D. & Co., Limited, [*or* if you and the applicant and all the respondents (if any) other than the said C.D. & Co., Limited] send such notice, the arbitration will be stayed pending the determination of the question whether a memorandum shall be recorded of the above-mentioned submission (or payment into Court) and of your acceptance.

If you and all the other respondents (if any) other than the said C.D. & Co., Limited [*or* if you and the applicant and all the respondents (if any) other than the said C.D. & Co., Limited] send such notice but do not agree as to the apportionment and application of the said sum of £ the arbitration will be proceeded with as between you and such other respondents [*or* as between the applicant and yourself and such other respondents].

In default of such notice being sent by you and all the respondents (if any) other than the said C.D. & Co., Limited [*or* by the applicant and yourself and all the respondents (if any) other than the said C.D. & Co., Limited], the arbitration will be proceeded with ; and if no greater amount than the said sum of £ is awarded as compensation the parties who do not send such notice will be liable to pay the costs incurred by the respondents C.D. & Co., Limited, subsequent to the receipt by such parties of this notice, and also any costs incurred subsequent to the receipt of this notice by any parties who send notice of their willingness to accept the said sum of £ in satisfaction of the compensation payable in the above-mentioned matter.

Dated this day of .

Registrar.

To the Applicant A.B.
[*or* To the Respondent G.H.]
[*or as the case may be*]."

(*f*) Form 18 is hereby revoked and the following form shall be substituted therefor :—

"Form 18.

NOTICE OF ACCEPTANCE OF A WEEKLY OR LUMP SUM OFFERED IN THE CASE OF AN INJURED WORKMAN.

[*Not to be printed but to be used as a precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the applicant accepts the sum of £ offered by the respondents C.D. & Co., Limited, in satisfaction of the compensation payable in the above-mentioned matter.

[*Or*, That the applicant accepts the weekly sum offered by the respondents, C.D. & Co., Limited, in satisfaction of the compensation payable in the above-mentioned matter.]"

(*g*) After Form 18 the following forms shall be inserted and shall stand as Forms 18A, 18B and 18C respectively :—

"Form 18A.

NOTICE OF ACCEPTANCE OF A LUMP SUM OFFERED IN THE CASE OF A DECEASED WORKMAN.

[*Not to be printed but to be used as a precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the applicant accepts the sum of £ offered by the respondents C.D. & Co., Limited, in satisfaction of the compensation payable in the above-mentioned matter."

"Form 18B.

FORM OF MEMORANDUM WHERE OFFER HAS BEEN MADE BY RESPONDENT TO PAY WEEKLY OR LUMP SUM WITH OR WITHOUT DENIAL OF LIABILITY.

(i) In case of injury to workman by accident—

[*Heading as in Form* 36.]

Be it remembered that on the day of , 19 , personal injury was caused at (*state place of accident*) to the above-named applicant, a workman under no legal disability [*or* an infant under the age of 21 years] by accident arising

out of and in the course of his employment by the above-named respondent.

And that on the day of , 19 , the said applicant duly applied to the above-mentioned Court for an arbitration to settle questions arising between him and the above-named respondent.

And that on the day of , 19 , the above-named respondent filed with the Registrar a notice admitting liability [*or* denying liability but submitting] to pay to the above-named applicant the weekly sum of to commence as from the day of , 19 , and to continue during the total or partial incapacity of the said applicant for work or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

[And submitted [but denied liability] to pay the sum of £ in satisfaction of the claim of the said applicant].

And that on the day of , 19 , the said applicant duly filed with the Registrar a notice accepting such weekly payment [*or* such sum of £ in satisfaction as aforesaid].

(ii) In case of death resulting from injury—

[*Heading as in Form* 36.]

Be it remembered that on the day of , 19 , personal injury was caused at (*state place of accident*) to , late of , deceased by accident arising out of and in the course of his employment by the above-named respondent, and that on the day of , 19 , the said died as the result of such injury.

And that on the day of , 19 , the above-named applicant duly applied to the above-mentioned Court for an arbitration to settle questions arising between him (them) and the above-named respondent.

And that on the day of , 19 , the above-named respondent filed with the Registrar a notice admitting [*or* denying] liability to pay compensation in the above-mentioned matter and paid into Court [*or* submitted to pay] the sum of £ in satisfaction of all liability in respect of the claim of the said applicant.

And that on the day of , 19 , the above-named applicant filed with the Registrar a notice accepting the said sum of £ in satisfaction as aforesaid.

The said notices (and payment into Court) constitute an agreement within the meaning of section 23 of the above-mentioned Act.

You are hereby requested to record this memorandum pursuant to the said section.

Dated this day of , 19 .

Applicant
(*or* Respondent).

Note.—This form may be adapted for cases not covered by the above words, by adopting the appropriate parts of Form 36."

"Form 18c.

NOTICE OF AN APPLICATION FOR AN ORDER AS TO COSTS.

[*Not to be printed but to be used as a precedent.*]

[*Heading as in Request for Arbitration.*]

Take notice that I intend to apply to the Judge at on the day of , 19 , at the hour of o'clock in the noon (*in case of a notice by a Solicitor* on behalf of , of) for an award directing how and by whom the costs of these proceedings should be borne and for such further or other order as the circumstances may require.

Dated this day of .

Applicant
(*or* Applicant's Solicitor).
(*or* as may be).

To the Registrar of the Court
and to
and to (all parties interested)."

(*h*) After Form 24 the following form shall be inserted and shall stand as Form 24A :—

"Form 24A.

INTERIM AWARD.

[*Heading as in Application for Interim Award.*]

Upon the application of the above-named A.B. dated the day of , 193 , and upon hearing

Having duly considered the matters submitted to me I do hereby make my interim award as follows :—

I order that the respondent C.D. do pay to the applicant A.B. the sum hereinafter mentioned on account of compensation for personal injury caused to the said A.B. on the day of , 193 , by accident arising out of and in the course of his employment as a workman employed by the said respondent—that is to say : —(*a*) forthwith the sum of £ , being the aggregate of a weekly sum of £ , calculated from the day of 193 , up to Saturday, the day of , 193 , and (*b*) the sum of £ on every Saturday commencing on Saturday, the day of , 19 , and continuing until the hearing of the above-named arbitration or further order.

And the applicant and the respondent are to be at liberty to apply as they may be advised—and this order is to be without prejudice to any order which the Judge may make on the hearing of the said arbitration, including an order for repayment by the said A.B. of the moneys hereby ordered to be paid or any part thereof.

And that the costs of this application be ."

5. These Rules may be cited as the Workmen's Compensation Rules (No. 1), 1930, and the Workmen's Compensation Rules, 1926, as amended, shall have effect as further amended by these Rules.

We hereby submit these Rules to the Lord Chancellor.

W. M. Cann.
S. A. Hill Kelly.
T. Mordaunt Snagge.
Barnard Lailey.
Ivor Bowen.

I allow these Rules, which shall come into force on the 1st day of August, 1930.

Dated the 16th day of June, 1930.

Sankey, C.

DOGS LEFT IN MOTOR CARS.

Interesting argument as to the liability of motor car owners for damage done by dogs left in charge of their cars during their absence is likely to be heard very soon in the Court of Appeal in an appeal just entered in the action *Fardon* v. *Harcourt-Rivington*.

In this action, which was tried before Mr. Justice Talbot and a common jury, the plaintiff was awarded £2,000 damages for the loss of an eye caused by a splinter of glass from a pane at the rear of the car belonging to the defendant which a dog left in the car for protection was alleged to have jumped at and broken as the plaintiff was passing.

Parliamentary News.

Progress of Bills.

House of Lords.

Third Parties (Rights against Insurers) Bill.
Read the Third Time and passed. [27th May.
Education (Scotland) Bill.
Read the First Time. [27th May.
Mental Treatment Bill. [H.L.]
Commons Amendments considered. [29th May.
Railways (Valuation for Rating) Bill.
Read the Third Time and returned to the Commons. [29th May.
Land Drainage (No. 2) Bill. [H.L.]
Read the Third Time and passed, and sent to the Commons. [3rd June.
Coal Mines Bill.
Consideration of Commons Reasons for disagreeing with Amendments. [24th June.
Criminal Appeal (Northern Ireland) Bill. [H.L.]
Second Reading. [3rd July.
Air Transport (Subsidy Agreements) Bill.
Second Reading. [3rd July.
Overseas Trade Bill.
Second Reading. [3rd July.
Illegitimate Children (Scotland) Bill.
Read the Third Time. [8th July.
Poor Prisoners Defence Bill.
Read the Third Time [8th July.
British North America Bill. [H.L.]
Read the Third Time and passed. [8th July.
Hairdressers and Barbers (Sunday Closing) Bill.
Read a Second Time. [9th July.

House of Commons.

Education (Scotland) Bill.
As amended (in the Standing Committee), considered.
Read a Second Time. [23rd May.
Small Landholders (Scotland) Acts (1866 to 1919) Amendment Bill.
As amended (in the Standing Committee), considered. [23rd May.
Education Bill.
Read a Second Time. [29th May.
Clergy Pensions (Older Incumbents) Measure, 1930.
Royal Assent. [4th June.
Railways (Valuation for Rating) Bill.
Lords Amendments considered. [5th June.
Air Transport (Subsidy Agreements) Bill.
Read the Third Time and passed. [20th June.
Mental Treatment Bill. [H.L.]
Lords Amendments to Commons Amendments considered and agreed to. [20th June.
Third Parties (Rights against Insurers) Bill.
Lords Amendments considered and agreed to. [20th June.
Overseas Trade Bill.
Read the Third Time and passed. [20th June.
Workmen's Compensation (Silicosis) Bill. [H.L.]
Read a Second Time. [20th June.
Employment Returns Bill.
Read a Second Time. [24th June.
Land Drainage (No. 2) Bill. [H.L.]
Read a Second Time. [24th June.
Pluralities Measure, 1930.
Motion for Presentation for Royal Assent after debate, agreed to. [26th June.
Public Works Loans Bill.
Read a Second Time. [27th June.
Land Drainage (No. 2). [Money.]
Considered in Committee. [27th June.
Road Traffic Bill.
As amended (in the Standing Committee), considered. [4th July.
Housing (No. 2) Bill.
As amended (in the Standing Committee), considered.
Read the Third Time and passed. [8th July.
Finance Bill.
Further considered in Committee. [9th July.
Coal Mines Bill.
Lords Reasons for insisting on certain of their amendments.
Lords amendments in lieu of certain of their amendments to which the Commons have disagreed, and Lords consequential amendment to the Bill, considered. [9th July.
Solicitors (Clients' Accounts) Bill.
Read the First Time. [9th July.

House of Commons.

Questions to Ministers.

RENT RESTRICTIONS ACT.

Mr. MACLEAN asked the Secretary of State for Scotland if there is any intention on the part of the Government to amend the Rent Restrictions Act, with a view to preventing house factors and proprietors making use of the present vagueness in the Act to induce tenants to pay increased rents under the impression that the houses they occupy have been decontrolled?

Mr. JOHNSTON: I am not in a position to give any undertaking as to legislation in the near future amending the Rent Restrictions Acts. I would, however, remind my hon. Friend that, where the question of decontrol or rent questions arising therefrom are in doubt, the tenant may have recourse to the Sheriff Court in terms of Section 11 of the Rent and Mortgage Interest Restrictions Act, 1923. [24th June.

CINEMATOGRAPH FILMS ACT.

Mr. DAY asked the President of the Board of Trade the number of cases that have been brought to his attention of cinematograph exhibitors who have failed during the previous twelve months to comply with the exhibitors' quota as set out in the Cinematograph Films Act of 1927; and what action has been taken in the matter?

Mr. W. GRAHAM: The number of cases disclosed in which exhibitors failed to satisfy the quota requirements of the Act during the first quota year, ended September last, was 157, but in many of these the exhibitor was only in occupation for a small part of the year. The cases are being considered, and proceedings are being taken in a number of instances in which the reasons advanced for the defaults are considered inadequate. [24th June.

DEATH DUTIES.

Mr. MANDER asked the Chancellor of the Exchequer the total amount of land taken in settlement of Death Duties under the Finance Act, 1910, and the average per year; and whether he proposes to accept the offer of the Duke of Montrose and to accept land in Scotland in this connection?

THE CHANCELLOR OF THE EXCHEQUER (Mr. Philip Snowden): I would refer the hon. Member to the reply given by my hon. Friend the Financial Secretary to the Treasury to the hon. Member for Devizes (Mr. Hurd) on 9th July, 1929. I am sending him a copy of that reply. No further land has been transferred under the arrangement since that date. As regards the second part of the hon. Member's question, the offer of land which has been received from the Duke of Montrose is receiving full consideration. I am not yet in a position to announce the result. [24th June.

ADVERTISEMENTS (REGULATION).

Mr. DAY asked the Home Secretary the number of county councils who have made bye-laws under the Advertisements Regulation Act, 1925, for the purpose of controlling unsightly advertisement hoardings; whether he has any information as to the effectiveness of this Act, and will he give particulars; and whether the powers conferred by this Act are at present sufficient?

Mr. CLYNES: Forty-nine county councils, out of a total of sixty-two, have made bye-laws since the passing of the Advertisements Regulation Act, 1925. I have no reason to suppose that the bye-laws will not be effective for their purposes, but I am afraid that it is not yet possible to measure this, having in view the five years' exemption conferred by the Act on then existing advertisements. [24th June.

INSTALMENT PURCHASE SYSTEM.

Mr. ARTHUR MICHAEL SAMUEL asked the Prime Minister whether he will, for the guidance of British firms producing for home consumption, request the Committee of Civil Research to examine and report upon the ultimate reaction upon employment caused by inflation of power to purchase unreproductive luxuries and the effect the creation of consumers' credit by the instalment system has had upon the financial and industrial crisis in the United States of America?

The PRIME MINISTER: I am obliged to the hon. Member for his suggestion, which will be noted. [25th June.

SMALL HOLDINGS.

Mr. ROSBOTHAM asked the Minister of Agriculture whether he can give an estimate of the latest demand for small holdings

from suitable applicants if facilities were provided direct by the State?

Dr. ADDISON: The number of unsatisfied applicants registered by councils in England and Wales at the 31st December, 1929, was 5,369, of whom 2,152 had been definitely approved as suitable and the remainder were awaiting investigation of their qualifications. These figures take no account of a latent demand which undoubtedly exists. No data exist for estimating the extent of the demand that would be revealed if facilities were provided direct by the State, but it would certainly be considerable. [25th June.

COMMONS AND WASTE LANDS.

Mr. EDE asked the Minister of Agriculture if he has yet issued a circular to lords of the manor pointing out the advantages to them and to the public of executing deeds under s. 193 of the Law of Property Act, 1925?

The MINISTER OF AGRICULTURE (Dr. Addison): As the names of most lords of manors and other persons entitled to the soil of commons are unknown to my Department, the issue of a circular, such as my hon. Friend suggests, would not be practicable. I am, however, arranging for the publication of a notice dealing with the matter. [25th June.

IMPORTATION OF PLUMAGE (PROHIBITION) ACT.

Captain BALFOUR asked the Financial Secretary to the Treasury whether all anglers returning from the Irish Free State have their tackle searched by the customs authorities in this country for artificial flies liable to confiscation under the Importation of Plumage (Prohibition) Act, 1921, if brought into this country without an import licence; and how many such confiscations have taken place during 1929 and 1930?

Mr. PETHICK-LAWRENCE: The effects of all persons arriving in this country from the Irish Free State are, of course, liable to the usual Customs examination to prevent the smuggling of dutiable or prohibited goods, but it is not the practice of the Customs officers to make a special examination for prohibited plumage. So far as can be ascertained, no confiscations have taken place in those circumstances. [26th June.

LAND VALUATION BILL.

Mr. SIMMONS (for Mr. SAWYER) asked the Chancellor of the Exchequer when copies of the Land Valuation Bill will be available to Members?

Mr. P. SNOWDEN: The Prime Minister announced yesterday that this Bill, owing to the pressure of other business, will not be taken. I have had the Bill in print for some time, and propose to consider whether to circulate it for information before the end of the Session. [26th June.

SMOKE ABATEMENT.

Sir N. GRATTAN-DOYLE asked the Minister of Health what number of local authorities have adopted bye-laws on the subject of smoke abatement; what number have no bye-laws; and whether it is proposed to take any steps to extend the adoption of such bye-laws?

Mr. GREENWOOD: One hundred and sixteen local authorities have made bye-laws. Although this leaves 1,652 without bye-laws, the districts without bye-laws are largely those where few or no manufacturing processes are found, and many of them are rural. In view of this, and of the powers of proceeding for proved nuisance even without bye-laws, I do not think it necessary at present to exercise the power given me by the Act of 1926 of forcing local authorities to make bye-laws. [26th June.

SEXUAL OFFENCES.

Viscountess ASTOR asked the Secretary of State for the Home Department whether, in view of the figures in the criminal statistics recently issued by his Department showing the increase in the number of sexual offences against young persons during recent years, he will consider the introduction of legislation to give effect to the recommendations contained in the Report of the Departmental Committee of inquiry into offences against young persons by amendments to the Criminal Law Amendment Acts and the Children Act?

Mr. SHORT: As my right hon. Friend said in reply to the hon. Member on 15th May, the recommendations will be borne in mind when time can be found for the Children Bill, but he cannot promise that it will be possible to give effect to all the recommendations. [26th June.

Legal Notes and News.

Honours and Appointments.

NEW RECORDERS.

The appointment of the following barristers to be Recorders of the under-mentioned towns, has been approved by the King:—

Mr. FREDERICK JOHN WROTTESLEY, K.C., to be Recorder of Wolverhampton in the place of Mr. Arthur Powell, K.C., resigned.

Mr. Wrottesley who was educated at Tonbridge and Lincoln College, Oxford, was called to the Bar in 1907. He served in France as Major in the 3rd North Midland Brigade, R.F.A., being mentioned in dispatches. He took silk in 1926.

Mr. ST. JOHN HUTCHINSON to be Recorder of Hastings in the place of Mr. Alexander Macmorran, K.C., resigned.

Mr. Hutchinson, who was called to the Bar in 1909, has been Recorder of Hythe since 1928. He was educated at Winchester and Magdalen College, Oxford.

Mr. FREDERICK TEMPLE BARRINGTON-WARD, K.C., has been appointed a Metropolitan Police Magistrate to fill the vacancy created by the retirement last week of Mr. Joseph Sharpe. Mr. Barrington-Ward was called by Lincoln's Inn in 1905, and took silk in 1919. He was appointed Recorder of Chichester in 1928.

The Board of Trade have appointed Mr. THOMAS BENGOUGH, Assistant Official Receiver for the London (Suburbs) and Northern Bankruptcy District, to be Official Receiver for the Bankruptcy District of Northampton as from the 1st July, 1930, in succession to Mr. A. J. Rogers promoted.

Mr. G. D. ROBERTS, Barrister-at-Law, has been appointed Third Senior Prosecuting Counsel to the Crown at the Central Criminal Court in the place of the late Mr. H. D. ROOME; and Mr. GERALD DODSON, First Junior Prosecuting Counsel vice Mr. G. D. Roberts. Mr. Roberts was called by the Inner Temple in 1912, and Mr. Dodson by the same Inn in 1907.

Mr. G. B. MCCLURE has been appointed Second Junior Prosecuting Counsel to the Crown at the Central Criminal Court in the place of Mr. Gerald Dodson; and Mr. L. A. BYRNE, Third Junior Prosecuting Counsel vice Mr. G. B. McClure. Mr. Byrne was called by the Middle Temple in 1918, and Mr. McClure by the Inner Temple in 1917.

Professional Announcements.

(2s. per line.)

Messrs. BLOXAM, ELLISON & Co., Solicitors, have removed their offices from No. 1, Lincoln's Inn Fields, W.C.2., to No. 9, Red Lion Square, W.C.1., where they will continue to practice. The telephone number is now Chancery 7480.

Messrs. LOVELL, WHITE & KING, of No. 5, Thavies Inn, E.C.1, have taken Mr. GEOFFREY BALFOUR HUTCHINGS into partnership as from the 30th June, 1930. The firm will continue to practise under the same name as hitherto.

MIDLAND BANK LIMITED.

The Directors of the Midland Bank Limited announce an interim dividend for the half-year ended 30th June last at the rate of 18 per cent. per annum, less income tax, payable on 15th July. The dividend for the corresponding period of 1929 was at the same rate.

BLACKSTONE PRIZE AT THE MIDDLE TEMPLE.

A Blackstone Prize of £105 (one of twelve offered annually to students of the Middle Temple by the Masters of the Bench) has been awarded to Mr. A. E. McDonald, of Balliol College, Oxford, as a result of the recent Bar examination in Criminal Law and Procedure.

THE CITY SECONDARY.

In connexion with the approaching retirement of Mr. William Hayes, the Secondary of the City of London and High Bailiff of Southwark, the Corporation referred to a committee a suggestion that the office of Secondary should be abolished or amalgamated with some other office. The committee have now recommended that the offices of Secondary and High Bailiff shall be retained with all their rights and be held by one person, who shall be a member of the legal profession, and that the positions shall not be amalgamated with any other office. The salary should be fixed at £750 per annum, rising by annual increments of £50 to a maximum of £1,000. Mr. Hayes, who was appointed in 1905, retires at the end of the year.

THE SOLICITORS' CLERKS' PENSION FUND.

PARTICULARS OF THE SCHEME.

Promises of support for this fund having been received from a number of firms, the trust deed and rules were duly executed, and the fund has now been registered by the Registrar of Friendly Societies under the Superannuation and other Trust Funds (Validation) Act, 1927.

The fund is a voluntary scheme, based upon the principle of joint contributions by the employer and the clerk. It is established for the benefit of male solicitors' clerks throughout England and Wales. Apart altogether from the natural and proper desire of employers that provision should be made upon retirement for their clerks, upon whose faithful work their own success in the profession so largely depends, it is believed that they will, on less altruistic grounds as well welcome the opportunity of making their own contribution to that provision by means of fixed and moderate annual payments (allowed as deductions for income tax purposes) and of freeing themselves from the uncertainty involved in the merely moral obligation (which is widely recognised in the profession at present) of providing a voluntary pension on retirement for those members of their staffs who have been unable to make sufficient provision for themselves.

Pensions may be provided of any sum up to £300 per annum, and the following are examples of the joint annual contribution for a pension of £100 per annum, namely :—

Age next birthday at date of admission to Fund.	Joint Annual Contribution. £ s. d.
20	7 14 8
30	12 19 6
40	23 7 2
50	49 4 10
60	177 7 8

Once the pension becomes payable it is payable for three years at least, whether the pensioner lives or not. If the member does not wish to retire at age sixty-five and he continues in business until he is seventy and then takes his pension, the £100 has accumulated to a pension of £145 4s. per annum. In the event of death before the pension is received the contributions paid by employer and clerk, with certain deductions and additions, are paid to the clerk's representatives.

The Law Society is trustee of the fund. It is managed by a committee representing employers and clerks, and of which Sir J. Roger B. Gregory is chairman. The offices of the fund are at 2, Stone-buildings, Lincoln's Inn, London, W.C.2. Telephone No. Holborn 5767, and full particulars of the fund will be forwarded to anyone who is interested.

JUDGE AND COUNSEL LISTEN-IN.

Judge and counsel listened to wireless music at Marylebone County Court last week. A claim relating to a wireless set was being heard, and the defendant offered to give a demonstration. Flex was stretched across the court to form an aerial and the set was " plugged in " to one of the electric light holders over the judge's desk.

Mr. Thomas Wilson Danby, solicitor, of Cadogan Gardens, Chelsea, S.W., left estate of the gross value of £21,870, with net personalty £21,126.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. Mr Justice EVE. Non-Witness.	Mr. Justice MAUGHAM. Witness. Part II.
M'nd'y July 14	Mr. Blaker	Mr. Andrews	Mr. Hicks Beach	Mr.*More
Tuesday .. 15	More	Jolly	Andrews	*Hicks Beach
Wednesday 16	Ritchie	Hicks Beach	More	*Andrews
Thursday . 17	Andrews	Blaker	Hicks Beach	More
Friday 18	Jolly	More	Andrews	*Hicks Beach
Saturday .. 19	Hicks Beach	Ritchie	More	Andrews

DATE.	GROUP I. Mr. Justice BENNETT. Witness. Part I.	Mr. Justice CLAUSON. Witness. Part II.	GROUP II. Mr. Justice LUXMOORE. Witness. Part I.	Mr. Justice FARWELL. Non-Witness.
M'nd'y July 14	Mr. Andrews	*Jolly	*Blaker	Ritchie
Tuesday .. 15	*More	*Ritchie	Jolly	Blaker
Wednesday 16	Hicks Beach	*Blaker	*Ritchie	Jolly
Thursday . 17	*Andrews	Jolly	Blaker	Ritchie
Friday 18	More	Ritchie	*Jolly	Blaker
Saturday .. 19	Hicks Beach	Blaker	Ritchie	Jolly

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

The LONG VACATION will commence on Friday, the 1st day of August, 1930, and terminate on Saturday, the 11th day of October, 1930 ,inclusive.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (1st May, 1930) 3%. Next London Stock Exchange Settlement Thursday, 24th July, 1930.

	Middle Price 9th July 1930.	Flat Interest Yield. £ s. d.	Approximate Yield with redemption. £ s. d.
English Government Securities.			
Consols 4% 1957 or after	88½	4 10 8	—
Consols 2½%	55½	4 9 8	—
War Loan 5% 1929-47	103½	4 16 10	—
War Loan 4½% 1925-45	99	4 10 11	4 11 9
War Loan 4% (Tax free) 1929-42	101½	3 18 10	3 16 9
Funding 4% Loan 1960-90	90½	4 9 5	4 10 0
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	94½	4 4 9	4 6 0
Conversion 5% Loan 1944-64	104½	4 15 8	4 14 6
Conversion 4½% Loan 1940-44	99½	4 10 8	4 11 6
Conversion 3½% Loan 1961	79	4 8 7	—
Local Loans 3% Stock 1912 or after	65	4 12 4	—
Bank Stock	255½	4 13 11	—
India 4½% 1950-55	85	5 5 11	5 12 6
India 3½%	62	5 12 11	—
India 3%	53	5 13 2	—
Sudan 4½% 1939-73	95	4 14 9	4 15 6
Sudan 4% 1974	86	4 13 0	4 15 6
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 15 years.)	83½	3 11 10	4 2 3
Colonial Securities.			
Canada 3% 1938	89	3 7 5	4 13 3
Cape of Good Hope 4% 1916-36	95	4 4 3	4 19 0
Cape of Good Hope 3½% 1929-49	83	4 4 4	4 17 6
Ceylon 5% 1960-70 (First Dividend £2 5s., 1st August, 1930.)	101	4 19 0	4 19 0
Commonwealth of Australia 5% 1945-75	89½	5 11 9	5 12 6
Gold Coast 4½% 1956	93	4 16 9	4 19 9
Jamaica 4½% 1941-71	93	4 16 9	4 17 9
Natal 4% 1937	95	4 4 3	4 16 9
New South Wales 4½% 1935-45	81½	5 10 5	6 8 6
New South Wales 5% 1945-65	88½	5 13 0	5 15 3
New Zealand 4½% 1945	96	4 13 9	4 17 6
New Zealand 5% 1946	101	4 19 0	4 18 0
Nigeria 5% 1950-60 (First Dividend £1 15s., 1st August, 1930.)	101	4 19 0	4 18 6
Queensland 5% 1940-60	87½	5 14 3	5 17 6
South Africa 5% 1945-75	99	5 1 0	5 1 0
South Australia 5% 1945-75	86½	5 15 7	5 17 0
Tasmania 5% 1945-75	85½	5 17 0	5 18 6
Victoria 5% 1945-75	87½	5 14 3	5 15 6
West Australia 5% 1945-75	86½	5 15 7	5 17 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	63	4 15 3	—
Birmingham 5% 1945-65	103	4 17 1	4 16 0
Cardiff 5% 1945-65	101	4 19 0	4 18 6
Croydon 3% 1940-60	72	4 3 4	4 15 0
Hastings 5% 1947-67 (First full half year's Dividend in October, 1930.)	103	4 17 1	4 15 9
Hull 3½% 1925-55	79	4 8 7	4 19 6
Liverpool 3½% Redeemable by agreement with holders or by purchase	74	4 14 7	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	53	4 14 4	—
London City 3% Consolidated Stock after 1920 at option of Corporation	64	4 13 9	—
Manchester 3% on or after 1941	64	4 13 9	—
Metropolitan Water Board 3% "A" 1963-2003	65	4 12 7	—
Metropolitan Water Board 3% "B" 1934-2003	66	4 10 11	—
Middlesex C.C. 3½% 1927-47	84	4 3 4	4 6 6
Newcastle 3½% Irredeemable	73	4 15 11	—
Nottingham 3% Irredeemable	63	4 15 3	—
Stockton 5% 1946-66	99	5 1 0	5 1 0
Wolverhampton 5% 1946-56	101	4 19 0	4 18 9
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	81½	4 18 2	—
Gt. Western Rly. 5% Rent Charge	100	5 0 0	—
Gt. Western Rly. 5% Preference	96	5 4 2	—
L. & N.E. Rly. 4% Debenture	75	5 6 8	—
L. & N.E. Rly. 4% 1st Guaranteed	72	5 11 1	—
L. & N.E. Rly. 4% 1st Preference	62½	6 8 0	—
L. Mid. & Scot. Rly. 4% Debenture	79	5 1 3	—
L. Mid. & Scot. Rly. 4% Guaranteed	76	5 5 3	—
L. Mid. & Scot. Rly. 4% Preference	68	5 17 8	—
Southern Railway 4% Debenture	79	5 1 3	—
Southern Railway 5% Guaranteed	98	5 2 0	—
Southern Railway 5% Preference	91	5 9 11	—

30

ain

ock

roxi-
Yield
ith
ption.

s.	d.
—	
—	
1	9
6	9
0	0
6	0
14	6
11	6
—	
—	
12	6
—	
15	6
15	6
2	3
13	3
19	0
17	6
19	0
12	6
19	9
17	9
16	9
8	6
15	3
17	6
18	0
18	6
17	6
1	0
17	0
18	6
15	6
17	0
—	
16	0
18	6
15	0
15	9
19	6
—	
—	
—	
—	
—	
6	6
—	
1	0
18	9
—	
—	
—	
—	
—	
—	
—	
—	
—	

ers should
dequately
R & SONS
el valuers
s and will
late, furs,
81-2.